# Exhibit C

## March 30, 2022 Transcript

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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| IN RE: | . | Case No. 21-30589(MBK) |
| LTL MANAGEMENT LLC, | . | |
| Debtor. | . | |
| LTL MANAGEMENT, LLC, | . | Adversary No. 21-3032(MBK) |
| Plaintiff, | . | |
| v. | . | Clarkson S. Fisher U.S. Courthouse<br>402 East State Street<br>Trenton, NJ 08608 |
| THOSE PARTIES LISTED ON APPENDIX A TO THE COMPLAINT, ET AL., | . | |
| Defendants. | . | Wednesday, March 30, 2022<br>10:00 a.m. |

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtor: Jones Day
By: GREGORY M. GORDON, ESQ.
DANIEL B. PRIETO, ESQ.
AMANDA RUSH, ESQ.
2727 North Harwood Street, Suite 500
Dallas, TX 75201

Otterbourg P.C.
By: MELANIE CYGANOWSKI, ESQ.
230 Park Avenue
New York, NY 10169

Audio Operator: Luz Di Dolci

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**J&J COURT TRANSCRIBERS, INC.**
**268 Evergreen Avenue**
**Hamilton, New Jersey 08619**
**E-mail: jjCourt@jjCourt.com**
**(609) 586-2311 Fax No. (609) 587-3599**

TELEPHONIC APPEARANCES (Cont'd):

| | |
|---|---|
| For the Official Committee of Talc Claimants 1: | Brown Rudnik, LLP<br>By: DAVID J. MOLTON, ESQ.<br>7 Times Square<br>New York, NY 10036<br><br>Genova Burns, LLC<br>BY: DANIEL M. STOLZ, ESQ.<br>110 Allen Road, Suite 304<br>Basking Ridge, NJ 07920 |
| For the Official Committee of Talc Claimants 2: | Cooley, LLP<br>By: CULLEN DRESHCER SPECKHART, ESQ.<br>55 Hudson Yards<br>New York, NY 10001 |
| For moving insurers: | Katten Muchin Rosenman LLP<br>By: TERENCE P. ROSS, ESQ.<br>2900 K. Street NW<br>North Tower - Suite 200<br>Washington, DC 20007 |
| For Arnold & Itkin, LLP: | Pachulski Stang Ziehl & Jones<br>By: LAURA DAVIS JONES, ESQ.<br>919 North Market Street, 17th Floor<br>Wilmington, DE 19801 |
| For the U.S. Trustee: | U.S. Department of Justice<br>By: LAUREN BIELSKIE, ESQ.<br>JEFF SPONDER ESQ.<br>One Newark Center, Suite 2100<br>Newark, NJ 07102 |
| For Travelers Casualty and Surety Company: | Simpson Thacher & Bartlett, LLP<br>By: ANDREW T. FRANKEL, ESQ.<br>425 Lexington Avenue<br>New York, NY 10017 |
| For TCC1: | Gilbert LLP<br>By: SARAH SRADERS, ESQ.<br>700 Pennsylvania Avenue SE, Suite 400<br>Washington, DC 20003 |
| For Walsh Pizzi O'Reilly Falanga, LLP: | Walsh Pizzi O'Reilly Falanga, LLP<br>By: MARK FALK, ESQ.<br>Three Gateway Center<br>100 Mulberry Street, 15th Floor<br>Newark, NJ 07102 |

THE COURT: All right. Good morning again, everyone. This is Judge Kaplan. We have a handful of people appearing through Court Solutions. I will try to keep my voice loud and the mics up so they can hear. For those who are on Court Solutions, should you wish to be heard, please use the raise hand function and I'll be sure to turn to you. We're going to address the LTL Management LLC matters. I think I'll probably follow the noticed agenda. Let me just ask, are there any calendaring issues anyone wants to raise at the outset?

(No audible response)

THE COURT: All right. Then as far as housekeeping, let me just say this is my law clerk's Alexandra Grant's last day. You've essentially chased her away. I hope you're proud of yourselves. She'll be joining PSE&G and we wish her the best and I will have a new term clerk joining tomorrow, Maria Dalevares (phonetic). We'll get you her contact information so that you can bother her as well.

Let's turn -- oh, Mr. Gordon?

MR. GORDON: I hope, Your Honor, we didn't chase her away. Your Honor, there is one calendar item.

THE COURT: Yes.

MR. GORDON: We just didn't rise quickly enough. I think the FTI matter, there's an agreement to push that to the end if it's okay with Your Honor.

THE COURT: That's fine. I think that makes sense.

Let's start with something that's easy. Let's start with the U.S. Trustee's motion to appoint a fee examiner. Good morning, Ms. Bielskie.

MS. BIELSKIE: Good morning, Your Honor. Happy to hear this is going to be easy. Your Honor, as I previewed during our last hearing, the U.S. Trustee is moving for the appointment of an independent fee examiner, in particular, Robert J. Keach of Bernstein Shur Sawyer & Nelson who I understand is participating today via Court Solutions if the Court has any questions for him.

Our office filed this motion on March 22nd at Docket Number 1812 and we thank Your Honor for hearing this on shortened time. We have filed the certification of service on March 23rd and that's at Docket Number 1826 indicating service in accordance with the Court's amended order shortening time.

As set forth in more detail in the declaration of Mr. Keach and in the attachments thereto, Mr. Keach currently serves and has served as a court-appointed fee examiner in other Chapter 11 cases. Your Honor, in light of the size and complexity of this case which at last count includes 13 professionals for the debtor, nine professionals for TCC1 and seven professionals for TCC2, the U.S. Trustee requests that the Court authorize the appointment of Mr. Keach as fee examiner to review the fee applications filed in this case and pursuant to the protocol that is set forth in the motion and

the proposed order.

Your Honor, agreement doesn't come easy in this case so we are happy to say that as set forth in the motion, TCC1 and TCC2 agreed to the appointment of a fee examiner and yesterday the debtor filed a statement in support of the motion at Docket Number 1897. This was filed on shortened time though, Your Honor, so if objections are permitted today, I'm not aware of any.

THE COURT: Well, let me call out. Are there any parties or counsel wish to raise any issues? The Court has had the benefit of reviewing the debtor's statement in support. Is there anyone else who wishes to be heard?

(No audible response)

THE COURT: All right.

MS. BIELSKIE: Unless Your Honor has any questions of me or Mr. Keach, Your Honor, we would ask that the Court enter the order on the fee examiner motion.

THE COURT: Thank you, Ms. Bielskie.

I see Mr. Keach on Court Solutions. I'm very familiar with him. I think he's a very good choice. I think he'll play a valuable role. I welcome him aboard and the professionals that he will retain which from what I read may include a sommelier. We'll look forward to his input. Thank you, Ms. Bielskie.

MS. BIELSKIE: Thank you, Your Honor.

THE COURT: All right. And, Bruce, that was Number 17 I believe on the CHAP calendar.

Mr. Gordon, with respect to Number 7 -- I understand Number 6 is the application for FTI which we're deferring for the moment. Number 7 on the agenda and Number 10 on the calendar is the Orrick Herrington & Sutcliffe retention. Is that resolved, those issues?

MR. GORDON: I believe Ms. Rush is going to handle that, Your Honor.

THE COURT: Okay, counsel?

MS. RUSH: Good morning, Your Honor.

THE COURT: Good morning.

MS. RUSH: Amanda Rush, Jones Day, for the debtor. Yes, Your Honor. Our understanding is that that application is resolved.

THE COURT: All right. Does anyone else wish to be heard? Mr. Molton, good morning.

MR. MOLTON: Your Honor, David Molton, Brown Rudnick, for TCC1. Just confirming, Your Honor, that we have resolved that matter with the debtor.

THE COURT: All right.

MR. MOLTON: And, Judge, it's good to be here without the plexiglass, by the way.

THE COURT: I think we're all happier. No masks, no plexiglass, could see faces and grimaces now and smiles. Thank

you, counsel.

Office of the U.S. Trustee, Ms. Bielskie, you had no further issues or Mr. Sponder?

MR. SPONDER: Thank you, Your Honor. Jeff Sponder from the Office of the U.S. Trustee. We, too, the United States Trustee resolved their issues. Just would want to look at the proposed form of order.

THE COURT: All right, then I'm going to mark Number 7 on the agenda and Number 10 on the CHAP calendar, as granted.

Ms. Rush, is there going to be an order submitted, an order?

MS. RUSH: Yes, Your Honor.

THE COURT: All right, we'll mark it OTBS. Thank you.

We can now move to Numbers -- I think we should hear them collectively -- 8 and 9. It is the Travelers Casualty motion for relief from the stay as well as the plaintiff insurers' motion seeking a determination as to the stay and/or relief. Let me have -- I assume we'll hear them collectively. Let's start with Travelers' counsel, and then I'll hear from movants insurers, and then we'll have responses.

MR. FRANKEL: Good morning, Your Honor.

THE COURT: Good morning.

MR. FRANKEL: Andrew Frankel for Travelers. If it's okay with Your Honor, the plaintiff moving insurers, there's a

lot of overlap --

THE COURT: Right.

MR. FRANKEL: -- in a few motions. They raise some threshold issues that we did not raise so we thought it might be a little bit more sensible to let them go first and then I'll follow, and avoid any overlap if that's okay.

THE COURT: I'm comfortable with that. That's fine. Thank you.

MR. ROSS: Your Honor, Mr. Ross for the moving insurers the plaintiffs, we're just going to need a minute to --

THE COURT: Displace them.

MR. ROSS: Good morning, Your Honor.

THE COURT: Good morning, counsel.

MR. ROSS: Again, Terence Ross with Katten Muchin Rosenman. We represent the moving insurers, what we call the moving insurers for this motion who are fundamentally the plaintiffs in the New Jersey coverage action that we're discussing here today and we are in alignment with Travelers' motion, and so we've agreed that we'll handle the discussion of whether or not the automatic stay applies at all and they will handle the balance of the hardship, so as to save some time for the Court.

THE COURT: Thank you.

MR. ROSS: Of course, we're relying on what we've

already represented to the Court in our briefs. And I'm going to hand up to Your Honor a copy of the PowerPoint presentation. If I may approach?

THE COURT: Absolutely. Thank you.

MR. ROSS: And, Your Honor, there's some animation at one part of the presentation which cannot be reflected on the printed page and I'll warn you when that's coming up.

THE COURT: Okay. What's the rating?

MR. ROSS: The objectors argue to the motions, Your Honor, that New Jersey coverage action is subject to the automatic stay and they point to 362(a)(1) and (a)(3) as this Court is aware. Let me talk about (a)(1) first which we contend does not apply for two independent reasons. First, the coverage action is not against the debtor and, second, the coverage action does not seek to recover from the debtor.

Now, it's undisputed that the debtor is not and never has been a party of the New Jersey coverage action. In response, the debtor argues well, we step into the shoes of Old JJCI which was a party because we are successor-in-interest to Old JJCI and that's simply not true. The divisional merger only gave the debtor certain assets. It did not step into, directly into the shoes of Old JJCI.

One of those was a right to make claims and I'd like to just show you that language here. If we could go to the next slide. So, this is the exactly language, Your Honor, from

Schedule 5(b)(1) of the insurance; it's alright to make claims under any and all insurance policies to which Chenango Zero had rights. They didn't get a policy, they didn't get the claims that are actually being litigated in the New Jersey coverage action or else it would have said made claims. This is the right to make claims, i.e., any future claims that come in that may be subject to the policy. So, that's the first point.

The second point is they didn't even really get that because if you look at Section 10(d)(1)(A) which we can show now, they turned around and they gave the right to pursue those claims to Chenango Two which is now New JJCI so all that they were actually left with is this ephemeral concept that we can make claims. We don't actually get to go pursue them and they're future claims which may or may not hit. And that simply does not give them the right to step into the shoes of Old JJCI for purposes of the New Jersey coverage action.

Moreover, if they wanted somehow permissively intervene, they'd have to show that their interest isn't being adequately represented under New Jersey procedural. And, clearly, J&J is fighting that case tooth and nail for them and that would suggest that their rights are big. And so the point here is that they're really not ever going to be -- they haven't been a party, they're never going to be a party and, therefore, those causes of action are not against a debtor.

Now, secondly, there is this concept that we have to be attempting to recover against the debtor. That's the second prong of (a)(1) and they have to be able to show both of those. And the argument the debtor makes and TCC1 makes is, it takes various forms, but essentially, the New Jersey action is going to eviscerate the coverage. I think at another point they say it's $2 billion they're going to leave the estate. That's simply not true. It's good rhetoric, but it's not true. It's a declaratory judgment action. Now, the debtor says it's styled as a declaratory judgment. No. It is a declaratory judgment action. We're seeking a determination as to what the coverage means at some very fundamental levels including whether the debtor even has any rights under the policy. That's a contested issue.

And so if the New Jersey coverage action ultimately decides that there is no coverage here for whatever reason or that the debtor is not entitled to take advantage of whatever coverage there is for whatever reason or that the pot of money has been exhausted, that's just the way it was. It's not a change in status so there's nothing being taken from the estate. If they had no coverage in the first place, then there was nothing suddenly disappearing from the estate. They never had coverage in the first place and, therefore, there's no attempt to actually recover against a debtor. We're simply trying to determine what have we got here and that's something

that ought to happen as quickly as possible.

THE COURT: But doesn't that analysis require an after the fact perspective? It would be after a judicial determination that there was no rights in a policy. But I'm supposed to at a point in weighing whether the automatic stay applies assume the worst --

MR. ROSS: No, Your Honor, you're not --

THE COURT: -- that there's no coverage and, therefore, they have no interest?

MR. ROSS: No, but the interest isn't from the coverage that -- it's the second prong of the (a)(1) test. Are we attempting to recover from the debtor and we are not attempting to recover from anything. We're simply trying to establish the old dragnet, the facts and just the facts. What is it that exists here?

So, we're not trying to take anything away from them, to eviscerate coverage, take $2 billion away from them. It just is what it is and there's a dispute as to what that is and so we have to go forth with the New Jersey coverage action to make that determination. Your question really is captured by the second prong of (a)(1), the recovery from a debtor even if you get past the first part that they're somehow a party, have some sort of interest and they can't get past that second prong.

So, let me move to 362(a)(3) because they also make

an argument of (a)(3) in court is this concept of exercising control over property of the debtor or the estate. We have two arguments there. The first is that there is no property at issue here and the second is that we're not exercising control or attempting to exercise control of the property. And Your Honor heard a lot during the motion to dismiss hearing on this complicated divisional merger, this Texas Two Step. What didn't come up much is where the insurance was in all of that. I think it's very important for the Court to understand that and so we're going to show you what we say the debtor is saying happened just based on the plan and the divisional merger.

And so you start off before this happened you have Johnson & Johnson. This, Your Honor, is the point where you have to look at the screen because we got some animation. So you got Johnson & Johnson. Apparently, they own the policy. You have Old JJCI which is a named insured under the policy and, therefore, has rights to make claims if there's coverage applicable.

So, what's the first thing we do? Well, we bring in Chenango Zero. So, Chenango Zero is created, Old JJCI goes out of existence and those rights that Old JJCI had to make claims in the policy goes to Chenango Zero. So, now we have the divisional merger occurs and under the divisional merger we have something interesting that happens with the insurance policies. So, again, the policy ownership remains with Johnson

& Johnson. Chenango Zero goes out of existence and there are two new entities created, Chenango One and Chenango Two and they each get parts of Chenango Zero.

And what Chenango One gets is the right to make talc claims under the policy according to the debtor and what Chenango Two gets is the more meaningful thing, the actual opportunity to pursue and get money for those claims. And so if we could look at again at that language which is Section 10(d)(1)(A) of the plan, and I've already shown this to the Court once, but Chenango Two which is now New JJCI is the one who has the meaningful rights which is to actually go out and pursue the future claims that might get made and, therefore, we believe that -- and let me just show you what happens then after all this is said and done. If we can put up the next screen?

So, just to square the tee, Your Honor, Chenango Two goes out of existence, becomes New JJCI. Chenango One goes out of existence, becomes the debtor. And as you see, the right to actually go after these talc claims doesn't go to the debtor. So what do we actually have when we're talking about whether there's property here or not of the estate is -- go down the next screen -- first, the debtor does not own the policy. That has never been transferred. Second, the debtor is not a named insured, never has been. Third, the debtor doesn't even have a right to pursue these claims. It has given that away to

Chenango Two which is now New JJCI.

So, our position is that on these facts you don't have property with respect to the insurance policies. Now, debtor and objector have pointed to some cases in which they argue to you, Your Honor, that on this set of facts other Courts have said no, no, no, this is property of the estate, it has to be considered and those are not being represented correctly to the Court. In every single one of those cases I went back and read them carefully, the debtor is the owner of the policy and a named insured which we don't have here.

And I'm going to give Your Honor a reference, one case cited by the debtor, and it's out of this court. It's the In re GB Holdings case, 2006. And there, the Court said, you know, I'll just read the language if you don't mind, Your Honor, as the named entity on the D&O policy at issue the debtor is the owner of the policy and is named insured under coverage of the policy for securities claims, the policy is therefore the property of the debtor's bankruptcy estate so the point being the owner.

But that Court then cited with approval the Eastern District of Pennsylvania case In re Eastwind Group, Inc. in which that Court made the unimpeachable observation of quoting because corporations pay for and own insurance policies, Courts considering the question have concluded that the policies are property of the estate pursuant to U.S.C. 541(a)(1). It's

undisputably correct. They own the policy, they pay the premiums for the named insured and the entire line of cases they rely upon derives from that proposition.

Here, the policies never changed ownership from J&J. Moreover, the little bit of ephemeral rights that they got they gave away to be pursued by New JJCI. That is not the set of facts of any previous case. I can't find a case that's on point with the weird fact here, Your Honor, but I would submit to you that under those facts that's not property of the estate. And I'm not the only one that takes that view of the situation.

So, let's look at what TCC1 said to the district court a week ago today, Your Honor. And TCC1 said any insurance policies available to the debtor are not property of the estate. In that same pleading they said they describe the policies are non-debtor insurance policies and this is Docket Entry Number 1833 of last Wednesday. So it's not just us making this assertion. It's TCC1. But it's not just TCC1. It's also the debtor itself.

So, Your Honor, remember that Mr. Kim came and testified. He's the chief legal officer that came and testified here in court. He was deposed at length. He was repeatedly asked about the assets of the debtor and gave a very interesting questioning. He's asked to list the assets and curiously missing from any of that is mention of the insurance

policies.

And it's not just this one. There's one we put up. This comes up multiple times in his depositions under oath. You would have thought that if it was property of the estate, he would have mentioned that and he described how they don't actually have offices. They have to sublease them. They pay back, you know -- he went through in great detail what was the substance of what the debtor was all about, what its assets were, what his property was, never mentioned these insurance policies. I think they're of actually the same view that it's not their property based on the divisional merger.

So, we're talking again, Your Honor, about (a)(3) here. Remember, there's two prongs to it. It's property and then exercise control over the property. So we don't think it's property in the first place but we're certainly not attempting to exercise control of the property. Again, we're seeking a declaratory judgment. We're not seeking to take anything away from the debtor or the estate. We're not trying to eviscerate the estate. We're not trying to take $2 billion from the estate.

All we want to know is what is the meaning of the policy, in other words, what is it? And once that's determined, that's what's determined. We are not saying okay, well, we're going to take it away from you now that you say that you have it. We're not trying to do any of that. And,

therefore, under (a)(3) as well as (a)(1) we think this is not subject to the automatic stay.

So, unless Your Honor has further questions, now I want to turn to the second part of the argument because as you know, we're seeking a determination whether or not the automatic stay applies in the first place --

THE COURT: Right.

MR. ROSS: -- which many Courts including Your Honor has said that is the appropriate course. You don't just take a risk and go out there and start litigating on a chance that you're violating the automatic stay. That's how you get sanctioned.

We're coming in, doing the right thing, saying could you tell us, we think we can keep going, we don't think the automatic stay applies, let us know. If you determine that the automatic stay does apply in these circumstances, then our argument to you under 362(d)(1) is that cause exists and that cause exists as you know, the statute says, you know, relief shall be granted and we're asking, at least the first instance, that we simply be allowed to continue the litigation in its totality.

And so, let me turn to the cause which we believe is impeccably established here under the law of this court. And our argument is this, that mandatory abstention applies here. We establish in our opening brief the six prongs that have to

be shown that come under 28 U.S.C. 1334(c)(2). The objectors have no comment on that. TCC1 doesn't even want to participate. They said we have no dog in this fight on this issue. The debtor does not attempt in any way to refute that mandatory abstention applies. Instead, the argument made by the debtor is this. It's irrelevant, Your Honor. It's not where we're going to litigate. It's when we're going to litigate. And as this Court has already said in In re Congoleum, that's just wrong. Mandatory abstention is not always relevant to whether cause exits. It's dispositive on cause.

And I'll pull the one quote. This is Judge Ferguson. As a matter of fact, I think Your Honor ended up taking over this case at the end.

THE COURT: Yes. Just another gift, yes.

MR. ROSS: But this was Judge Ferguson, not Your Honor.

THE COURT: Correct.

MR. ROSS: Judge Ferguson says since the movants have established all the factors for a mandatory abstention, I'm going to find that the movants haven't met their initial burden for establishing cause for stay relief. The objector said, oh, you don't even had to think about what the harm to us is because they don't establish cause because it's irrelevant this mandatory abstention concept. I'm sorry, it's been shown to

apply here and this Court says yeah, that's a really relevant factor and we've met that.

And our argument to you, Your Honor, is that on that ground alone it ought to be sufficient to lift the stay in its totality. Indeed, what Judge Ferguson did here, he was also faced with a sort of complicated set of facts as far as whether or not automatic stay applied in the first place so she essentially said, you know, I don't want to do something precedential over, just assume that it does, but then we're going to lift the stay, a perfectly valid option part of this Court noted, will make rulings on that, and she lifted the stay in its entirety.

Now, this is a really good case, and it's on all fours here because it was a mass tort case. The other litigation going on was insurance coverage litigation. It could not be any more applicable to the facts here and really, it's something that the Court would have to figure out a way of getting around this in order to deny the motion or else every time you see Judge Ferguson, you go sorry, I disagree with you on In re Congoleum. And they don't have a single argument against it other than it's irrelevant which it plainly is not or else this would have to not exist for it to be irrelevant.

So, it's not just though the mandatory abstention as cause. Clearly cause is established, but Courts in this circuit have also looked at a balancing of harms test and both

the moving insurers and Travelers believe that they are significantly harmed and that's an additional factor that has to be considered here. We've laid those out in our brief. We're going to turn the podium over to Mr. Frankel who's going to discuss that aspect of the motions with you, Your Honor.

THE COURT: All right, thank you, counsel.

Mr. Frankel?

MR. FRANKEL: Good morning, Your Honor. Andy Frankel from Simpson Thacher for Travelers.

Just to level set a little bit, I've been involved in dozens of asbestos and mass tort related bankruptcies and I know many of my colleagues around the room, and Your Honor's had some, and it's the rule rather than the exception that when there's coverage litigation lurking in the background, that that coverage litigation proceeds while the bankruptcy action goes forward.

We've cited several examples in our brief, Your Honor, where Courts have lifted the stay. We've cited, you know, Imerys, Congoleum, Duro Dyne was Your Honor's case, Mid-Valley, Kaiser Gypsum, Quigley, AC&S, Peerless. There are other cases. I mean, I was in this court, I'm dating myself, but it was years ago in the Moralo bankruptcy and Judge Stern, the late Judge Stern, issued the same ruling and agreed that, yes, abstention applies to the coverage case whether it's mandatory or discretionary, and for that reason the stay should

be lifted.

But the reason you don't see more decisions like that, Your Honor, is because in most cases it's not even disputed. Everybody recognizes that there's an interest to all the parties, not just the insurers, but the debtor to the claimants in getting resolution of the coverage issues particularly in mass tort cases; Lloyd E. Mitchell, Garlock, Pittsburgh Corning, Plant Insulation, Honeywell NARCO, I mean the list goes on and on where there are debtors pursuing their bankruptcy and a coverage litigation happening simultaneously in the mass tort context. And by the way, those are to a tee all cases where the debtor had far less resources at its disposal to pursue both actions at the same time.

And the uncertainties here are in terms of the insurance issues. They're quite significant, Your Honor. J&J has demanded some $2 billion from 42 insurance companies for a total of approximately $2 billion that they say applies and as you know, those claims involve not just future claims but three and a half billion dollars that J&J has already paid for in defense costs, in settlements. All the while J&J and Old JJCI and Middlesex, which I'll get to in a minute, had no problem litigating the coverage action while there were 38,000 claims pending across the country in the NDL litigating, you know, going to trial.

There was no -- J&J had no problem, you know,

defending those actions and at the same time dealing with coverage action in which it was both a claimant and a defendant. And it's not as simple as saying well, you know, there's $2 billion give or take in coverage and there's a lot more than that in potential liability so either there's no coverage of it's fully exhausted. As Your Honor I'm sure can appreciate, it's a lot more complicated than that.

There are all kinds of rules in mass tort cases when you have injuries that span multiple policy periods determining how you allocate damages, what policies are triggered, how you account for the self-insured retention that the debtor or the insured rather has self insurance, captive insurance, how do you deal with asbestos and other exclusions. There's a long list of fairly complex issues that, frankly, all parties have an interest in getting clarity on. It's not just a binary there is coverage, there isn't coverage, it's exhausted, it's not coverage.

And the New Jersey state courts, Judge Vignuolo and all through the court system in New Jersey are very experienced in these issues. They have case law dealing with most of these issues. There might be some novel issues in this particular case but they've dealt with the rules of the road in terms of how you allocate damages, they've dealt with issues about self insurance, they're experienced in handling these types of issues and as my colleague pointed out, they're the only forum

given mandatory extension that can resolve those issues.

And, you know, it would be nice if the insurers and J&J saw eye to eye on those issues but we don't. The insurers have received, you know, massive demands for coverage and basically have disputed a lot of these rules of the road in terms of the declaratory judgments that the parties are seeking. And so, it really is in everybody's interest to get clarity on those issues in the State Court.

Travelers and the other insurers have a cloud of uncertainty about their rights and obligations. J&J has a cloud of uncertainty about the extent of coverage. And it just doesn't make sense to hold all the insurers and all the parties hostage for further pointless delay while J&J and the debtor attempt to resolve the underlying talc claims and work on a plan of reorganization. Inside and outside of bankruptcy it's commonplace for the insurance coverage issues to be sorted out while all those things take place in terms of resolution of the underlying tort claims and the bankruptcy issues.

But there's even greater urgency from the insurers' perspective in a bankruptcy action like this because as we've seen in many, many other cases, the fact is that while J&J and other debtors attempt to resolve on a massive basis a global resolution and develop a trust that says well, here's how we're going to handle claims, the stakes, the financial stakes for the insurers are going to accelerate and dramatically increase

rapidly all without any resolution of what do these policies mean, how do you interpret, how do you apply policy provisions to particular types of claims. And so, the quantum of liability which, you know, is what gives insurers standing under the Third Circuit is dramatically going to increase.

And, you know, so everybody, as I said, are going to have questions, you know, what policies apply, how do you interpret the policies, how do you allocate damages and, you know, one possibility which the debtor suggests is just leave the insurers hostage while we sort all that out and we'll come back and figure out the insurance after the fact. Let's us focus on a resolution. But all those insurance coverage issues, they're still going to remain. It's not like they're going to be resolved, Your Honor, and so at the end of the day it's a lot better and, frankly, it's more likely to lead to settlement if you can get a resolution if there's a Court available to resolve those key questions while the settlement discussions are going forward.

THE COURT: Counsel, isn't the overarching distinction between the cases that have been cited and you're correct that every one of those cases insurance coverage was at issue and I would venture to say in the 60-plus asbestos cases that have been there, we've had coverage issues in most of them as in the diocese cases, as in the pharmaceutical cases. I question how many actual coverage disputes go to trial and were

not resolved as part of the bankruptcies. But isn't the distinction here the fact that in all of those cases insurance was critical to funding a plan and that's not definitive in this case.

MR. FRANKEL: I think everybody is in agreement, Your Honor, that a plan of reorganization is not dependent on insurance. But from our perspective that only provides more reason why the coverage case should go forward. There's no dispute that the debtor doesn't need the insurance in order to go out and settle these claims. That's what they're telling Your Honor. They're not making an argument that we have to know how much insurance is available for us to be able to resolve the claim. They're making very different arguments which I'll turn to in a minute. But they're saying well, it'll be a distraction.

So, everybody is in agreement, you don't need the insurance coverage to resolve the claims, you don't need the coverage to develop a plan of reorganization but yet the insurers are asked to just kind of sit on the sidelines while all these uncertainties exist. And insurers, as Your Honor knows, when given the risks that the debtor could go out and J&J could go out and agree on a plan and agree on a global resolution that they later intend to say well, you have to pay your share of this and it's a lot of money, insurers don't just sit on the sidelines and say fine, you know, we have an

interest in insuring that the plan is confirmable and that a plan and a settlement doesn't trample on contract rights, it doesn't impair our rights, it doesn't create new obligations. And so you'll see in a lot of those cases, Your Honor, the insurers turn out to be some of the most vociferous objectors to the plan.

Now, if we had clarity on what the rights and obligations under the policies were, I'm not saying every objection would go by the wayside, but there could be fewer objections. There might be no objections. They would be narrower and more focused. It's leaving this cloud of uncertainty just doesn't make any sense in that context.

And to be clear, you know, Travelers has no problem with the mediation going forward or participating in mediation. In fact, we filed a motion yesterday where we're asking the Court to require Travelers to be a participant in the mediation alongside with J&J and the talc claims. To the extent they're going to seek money from Travelers and other insurers, we want to be in the room. And on the insurance coverage issues, Travelers would be happy to mediate with J&J and I'm sure many other insurers of J&J would be happy to have a mediation.

But, in my experience, Your Honor, when there are so many complex disputed issues, having a Court available to issue key rulings on some of those issues only makes settlement more likely, not less likely. I'll just give you one really quick

example.

We have this Ingham judgment which Your Honor heard a lot about during the trial a couple of weeks ago. It's a $2 billion liability and to date J&J says well, the insurers are responsible for all of that. But there's no coverage for punitive damages. There are questions about some of the claimants in that Ingham case had exposure that post-dated the policies. There are some complicated issues that Judge Vignuolo in the New Jersey courts can decide as a matter of law. You don't need a lot of discovery to issue rulings. And if we're right that there's no coverage for that claim or regardless of the outcome, frankly, the parties would want to know that as part of their settlement discussions.

There's another issue that's come up and it relates to a point that my colleague made about, you know, whether or not the declaratory judgment action is really trying to eviscerate coverage or recover against the debtor. It very well might turn out, Your Honor, that as a result of the rulings in the coverage case that would benefit the debtor, it would benefit the TCC and the claimants. I think they've lost sight of some of these issues.

One of the big issues in the case, we talked about this in our brief, is the issue of J&J's (indiscernible) insurer, Middlesex. They're an insurance company. J&J says, well, they paid enough, they don't owe anymore. But, Your

Honor, Middlesex wrote billions of dollars in coverage that the insurers believed should be part of this allocation and so if we're right about that, and that's an issue for the state court to decide, not this court, but if we're right about that, that benefits the debtor. It benefits the talc claimants. And so under these circumstances, particularly where there's mandatory abstention and, you know, this Court is not a forum to resolve those issues, it just makes perfect sense to allow those cases to go forward, this case to go forward, the coverage case.

Let me just address quickly some of the debtor's and the TCC's arguments on these issues. First of all, the debtor argues that lifting the stay could adversely affect their settlement efforts because it would burden Mr. Kim who has to focus his duties and responsibilities on settling. First of all, the debtor has very capable counsel, McCarter & English. They've been litigating the coverage case for three years, they're standing at the ready to deal with coverage issues and I know Mr. Kim and as talented as he is, I doubt he was writing all the briefs in the coverage case and handling all the depositions.

But, again, remember, even before the automatic stay was in place Mr. Kim was overseeing the coverage litigation dealing with not just the talc claims but all the product liability claims that J&J and there was no problem, that J&J had no problem defending those cases entering into numerous

settlements while the coverage case was going forward.

They had an army of global law firms that were dealing with those issues and they have breathing room now, Your Honor, as a result of the stay. There are 38,000 cases that are not being litigated in the tort system. There are Attorney General actions that they like to cite that are not going forward. We think Mr. Kim can chew gum and walk at the same time and it's not this notion that there's some burden like we can't deal with the coverage issues and try to work in this case is vastly overstated.

Also, Your Honor, in terms of the burdens of the coverage litigation, the document discovery has been substantially completed. Judge Vignuolo, while the case hasn't moved extremely rapidly, she's been presiding over this case. She set a trial date. I think it was in May which would have to be adjusted. But the fact is that even without depositions or expert discovery, the insurers are ready to make partial summary judgment motions that could resolve a lot of these issues and wont take any further discovery. It would be very efficient.

I made the example of the Ingham judgment is one issue but there are lots of issues like that, Your Honor. The moving insurers have an issue with their claim control provisions. There might be, you know, dozens of other legal issues that the Court can resolve without any undue burden.

And yes, there will be some depositions but those depositions are not going to be from any LTL employees. This is a breach of contract case or a contract action, a declaratory judgment action. So, the witnesses who would likely have the most knowledge for a coverage action would be from J&J's risk management department.

So, what's the other argument? The TCC argues, well, we just hired insurance coverage counsel, we need to get up to speed because they're going to have to intervene if this case goes forward. Well, first of all, that sounds very different from what we saw in their retention application. They touted their experience in these areas. Not only that, they touted their knowledge of J&J's policies from their work in the Imerys case. But, regardless, the talc claimants have no right as a matter of law to intervene in the coverage case.

There's clear New Jersey law on this. We cited in our brief, the Cruz Mendez case, the President v. Jenkins case. It's the rule in almost every state jurisdiction that third party tort claimants have no standing or right to intervene. If they had a right, you would have seen claimants intervening during the prior three years while this litigation was going forward. Not one claimant tried to intervene because they knew that they couldn't.

Now, if the TCC thinks that, you know, we have the law wrong or they have some unique factor, let them make a

motion to intervene with Judge Vignuolo. We'll hash these issues out. If they believe they need more time to get up to speed and the Court is inclined to let them intervene which I think is highly unlikely, the state court can deal with that, not this Court.

My colleague has already addressed the argument that they make about trying to eviscerate coverage. They argue that -- I think I've covered those, Your Honor. I think insure -- when you look at the policy arguments that, you know, for a stay, they really don't apply in this instance. I think allowing the coverage case to go forward would help mediation and settlement efforts. There's no need for a breathing spell for this one lawsuit that the parties have been dealing with and while there's a stay of all the underlying talc claims, it's not a collection effort.

And, in short, as I said from the outset, it's not only the norm in cases like this that the coverage case go forward simultaneously, but it really is in everybody's best interest to get those issues resolved regardless of whether or not insurance is critical to this case. It's critical to my clients to know what their obligations are. And if J&J decides that they're going to assign all their rights to a trust, there's going to be a trust one day that's going to come after the insurers and we're still going to hash out all of those issues. So, for all those reasons, Your Honor, and for the

reasons in our paper we respectfully ask that the stay be lifted if it applies.

THE COURT: Thank you, counsel.

Good morning.

MR. PRIETO: Good morning, Your Honor. Dan Prieto of Jones Day on behalf of the debtor. Your Honor, obviously the debtor opposes the two motions filed by the insurers and we filed a consolidated objection to those motions. And I would just say at the outset that, you know, the debtor would submit to Your Honor that the stay clearly applies and I'll explain why in a second. We think it applies under both (a)(1) and (a)(3).

I would also suggest to Your Honor that there has not been established cause to lift the stay and I'll likewise sort of address some of the arguments that the insurers have made. I also want to state this up front that the debtor does not oppose the insurers participating in the mediation subject, of course, to the co-mediator's discretion to determine, you know, if and when and how they participate. I would also say we have no opposition and are willing to separately engage in settlement discussions with the insurers to see if we can limit or resolve the issues. So, it's not a situation where we're sort of, you know, cut them out of the process.

But to be clear, and I think there's no dispute now on this as I've heard this morning, we do not need a resolution

of the insurance issues in order to resolve this Chapter 11 case and that's because we have other sources of funding, probably most importantly, the funding agreement. But what should be avoided at this critical juncture in the case from the debtor's perspective is restarting this litigation at a time when the parties have just started mediation and are focusing their energy and efforts on trying to reach a resolution in this case. There may be a time in this case where it makes sense to restart the litigation, but at this point, Your Honor, I would submit it's not the right time.

So, let me just address some of the arguments you heard this morning and that are, you know, in their papers and I'll start with, you know, whether or not the automatic stay applies to the insurance coverage action. As I said before, we think it's clear it does, Your Honor, and let me start with Section 362(a)(1) and why that applies.

Your Honor, fundamentally, it applies to the coverage action because the debtor, through its allocation of insurance rights under the 2021 corporate restructuring, is effectively a party to the litigation. And as you heard, there's no dispute that Old JJCI is already a party to that pending insurance coverage action. And as Your Honor knows, the corporate restructuring resulted in Old JJCI no longer existing.

And as we cited to Your Honor in our objection under applicable New Jersey State Court rules, LTL would be

substituted in for Old JJCI. Now, I heard this morning and you heard a lot about it, you know, these provisions in the merger agreement that they suggest to Your Honor means that the debtor can't participate even though it has these valuable contractual rights that warrant protection. But, Your Honor, that provision is not -- it doesn't eliminate any rights. It simply obligates New JJCI to the extent, frankly, we decide it's beneficial to pursue your coverage.

And I think the reason that's in there is because it addresses a concern that the insurers could have raised that, well, yeah, you transferred some rights over here but you're not the proper withstanding. Well, we solved that. We put an obligation on New JJCI to intervene and pursue coverage for our benefit if it's necessary. So, it's an obligation. It doesn't eliminate our right to also participate by virtue of holding contractual rights under the insurance policies.

THE COURT: How do you address the issue that the debtor's right to intervene isn't automatic in that J&J, as a party, would be representing the same interests and defending the same goals, so-to-speak, so that the state court could have discretion in not permitting LTL to join or intervene or come into the litigation?

MR. PRIETO: Well, I'm not an expert on the New Jersey rule, but as I read it and as I understand the application of the rule, it's pretty automatic and, obviously,

the debtor has rights. They're valuable. They're asserted to be over 2 billion dollars. As Your Honor heard in the PI trial and all the evidence submitted there, the debtor's ultimately responsible for the talc liabilities, so it would be a very odd result that the party responsible for the talc liabilities with contractual rights to assert claims and coverage isn't permitted to participate simply because another affiliate is alleged to have similar interest with respect to the coverage.

THE COURT: The debtor is required to indemnify J&J, correct?

MR. PRIETO: Correct.

THE COURT: Are their interests aligned then, necessarily?

MR. PRIETO: Yes, I would say their interests are aligned with respect to the liability, you know, defending the liability. But I would also indicate to Your Honor is that, and you saw this testimony before in the PI trial, the insurance policies here is that you would expect to have a defined term with respect to who's a named insured or who's an insured under the policies and that includes subsidiaries. Well, the LTL is a subsidiary. It's another reason why we have, clearly, we have standing to pursue our rights here.

So, one of the arguments that was advanced by the insurers with respect to 362(a)(1) is that it doesn't apply because they're not seeking to recover a claim. They're just

seeking a declaratory judgment, so it's not applicable. And I think Your Honor knows, it's pretty clear from the statute, you know, 362(2)(a)(1) is written in the disjunctive. And, you know, after they filed their reply, we looked at this issue and the Third Circuit has made this, you know, claim and that's the Borman v. Raymark Industries Inc. case at 946 F.2d 1031.

And the Third Circuit says, quote, Section 362(a)(1) stays an action or proceeding against the debtor or to recover a claim against the debtor. This disjunctive language clearly indicates that Congress intended for 362(a)(1) to stay actions against a debtor that are not necessarily brought to recover a claim. So, clearly, 362(a)(1) could apply and does apply to a declaratory judgment action because the -- you know, to the extent the action is against the debtor and, again, I would submit that under the circumstances here in light of the transaction -- the 2021 transaction, the action is against the debtor.

Your Honor, now turning to Section 362(a)(3), the insurance action implicates a stay under 362(a)(3) because it seeks to adjudicate valuable property rights of the debtor. The insurers this morning said, well, we're not seeking to eviscerate rights. We're not seeking to do anything other than, you know, get clarity as to how the contracts work and that's not something (a)(3) addresses.

Well, again, the Third Circuit, I think, disagrees,

Your Honor. The Third Circuit specifically found that Section 362(a)(3) is interpreted to stay acts that seek to diminish insurance coverage, like a declaratory judgment action; and that's in AC&S, Inc. v. Travelers 435 F.3d 252, 2006 opinion.

And, Your Honor, as you saw in the papers and as you recall, I mean, Your Honor has addressed this issue in connection with the PI ruling and found that the debtor's property interest in the policies were rights to coverage our properties, and that conclusion isn't inconsistent with numerous other courts have similarly ruled that rights under policies, not just the policies themselves but just rights under policies are property of the estate.

So, Your Honor, I would submit that the stay clearly applies. So, the question then becomes should the stay be lifted and has cause been demonstrated to Your Honor. And, again, we do not think cause has been established here. And let me start with the harm to the debtor. And we think lifting the stay here would harm the debtor for two primary reasons.

First of all, I think it's pretty clear that it would disrupt settlement efforts. And so this is simply not the time to restart the coverage litigation. Again, it may make sense after the conclusion of the mediation depending on what happens. We can revisit that. But at this very moment in time, to distract both the debtor and the Talc Committees and other parties with having to, sort of, refocus on whether or

not this, you know, what the issues are and how to litigate the insurance coverage issues would be a distraction to the mediation efforts.

Also, Your Honor, as a practical matter, the result of the mediation could very well impact how the parties think about or pursue the Insurance Coverage Action. For instance, there could be an agreement where it's clear the debtor is going to maintain control over the insurance rights notwithstanding a funding of a trust. Or, alternatively, it could be a partial assignment of insurance rights to the trust for the benefit of the claimants. Those types of discussions may impact who ultimately has the ultimate interest in the outcome of the litigation and, you know, it would make sense to me to see where we land on issues like that before we start restarting the litigation at this stage.

And then the second reason, Your Honor, I would suggest that lifting the stay would harm the debtor goes to the issue that -- some of the key issues in this case would be addressed in that coverage action. And we discussed this in our objection and I'm referring, specifically, to the expected and intended coverage defense that the insurers have asserted in the coverage action.

Adjudication of that defense would require a determination regarding whether Old JJCI or J&J had the subjective intent to cause the alleged injury and whether Old

JJCI and J&J's talc products were harmful and contained asbestos. Your Honor, that goes to the heart of the dispute in this case. It's a dispute that we're trying to resolve through the mediation process. And as Your Honor's well-aware, the debtor maintains that the cosmetic talc products are safe, did not contain asbestos and did not cause disease. And obviously the Talc Claimants disagree and that's what we're trying to work our way through. If the debtor's required to litigate these issues now, it will face the risk of collateral estoppel and evidentiary record prejudice which could directly impact its ability to resolve the claims in this Chapter 11 case.

Now, Travelers, I think, in its reply, argued that there shouldn't be really a concern because all they're really doing is asking the Court to interpret its contract, the insurance policy, and sort of apply it to the current record underlining the tort claims. And while we're glad to hear the suggestion that I think I hear from Travelers that they're not -- they don't believe additional discovery would be necessary on this defense, the debtor believes the other insurers disagree with that.

And, in fact, if you look at the moving insurers' reply brief, I think it's the last page, they suggest to Your Honor that one of the things they'd like to do on a go forward basis is take discovery on that defense. And putting aside whether or not there's further discovery what the record is

fundamentally, what the insurers are asking the state court in New Jersey to do is reach a conclusion on those issues which, again, go to the key issue in this case.

Now, the moving insurers in their reply also try to downplay why litigating that defense would be harmful to the debtors because they say, look, that's a routine defense. It's litigated in a number of different cases including mass tort cases where there's still pending tort claims, you know, what's the issue doing it in this case. But, Your Honor, what they're overlooking is the uniqueness of this Chapter 11 case. The debtor here disputes that its cosmetic talc products cause injury or contained asbestos.

Causation was a highly disputed issue in the underlying tort system. You heard a lot of testimony about that already in this case. That is starkly different than many other mass tort Chapter 11 cases where the debtors have acknowledged that their product contained asbestos or otherwise caused some harm. So, pursuing that defense goes, again, to the very heart of what's at issue in this case which is, to me, different than a lot of other mass tort cases.

So, let me turn now, Your Honor, to the harm to the insurers -- the alleged harm to the insurers. Because I think in contrast to the harm the debtor would suffer from the lift stay here, from my perspective, the insurers haven't really identified much harm at all for the stay staying in place.

They say that they need clarity with respect to their obligations under the policies. And I get the desire for clarity but the question is what's the urgency? Why does this have to be done right now? Why can't it be done later in this case at some other stage? They haven't really articulated why there's a critical timing component to getting clarity.

The insurer suggested they would be harmed because the debtor's affirmative claims that have been asserted by J&J and Old JJCI, now the debtor, in the insurance coverage action aren't stayed but on the other side their declaratory judgment request is stayed, and that's sort of unfair. Well, to the extent this wasn't clear in our response, Your Honor, let me just clarify our position on that.

The counterclaims that were asserted in the underlying insurance coverage action are, effectively, mirror images of what the insurers asserted. And they go to the scope and extent of the insurance coverage. So, from the debtor perspective, those claims are also, likewise, stayed because they implicate 362(a)(3). It implicates property of the estate because it's asking this Court to fundamentally address the coverage issue the same way that the insurers are asking the Court to do so.

The insurers also argue that further delay may harm them because if they lose the coverage action and the parties, you know, J&J and LTL ask for it, we may seek prejudgment

interest. But, obviously, Your Honor, I would point out that during the pendency of the stay and the litigation, frankly, insurers haven't been paying what the debtor believes is owed. So they've been having the benefit of not paying us and they would continue to have that benefit during the stay, so I don't see the prejudgment interest as a major harm that they might suffer.

And, of course, it's fairly premature to argue about prejudgment interest at this stage when the coverage action remains in its early stages, and, as I understand it, a trial would likely not be scheduled to the end of 2023 or early 2024. So, I'm not seeing a lot of harm, Your Honor, that's been articulated. And certainly not compared to the harm the debtor would suffer.

So, just briefly touching on the factor of respect to the likelihood of success on the merits, I would just say, given the harm that the debtor would suffer, I don't think that factor is all that illuminating as to whether there's cause and I would suggest Your Honor doesn't have to consider it. But if the Court does consider it, I would say, Your Honor, that all you have in the record is, sort of, conclusory allegations that the insurers think they'll win. And I think those unsupported statements don't really provide that that factor would support cause for lifting the stay.

So, let me address the argument that mandatory

abstention somehow equates to automatic lifting of the stay. And you heard a lot about that this morning and you heard a lot about that in the papers, as well. That is not the law, Your Honor, from my perspective. And, you know, the case that the insurers rely on exclusively is Congoleum and you heard, again, a lot about it today. And they say it's on all fours, it clearly establishes the proposition and they showed you a quote from the judge but, Your Honor, if you examine those facts, to me, it's clearly distinguishable and it's not in any way our situation.

So, in Congoleum, Your Honor, the debtor had entered into a global settlement to resolve its tort claims through a pre-packaged plan of reorganization. And under that agreement, the trust was to be funded primarily, if not exclusively, with insurance proceeds. But prior to that settlement and prior to the bankruptcy case, the insurers had filed an action in state court challenging coverage. And at the time that Congoleum filed for bankruptcy, there had already been significant progress and developments in that state court action.

So, what the Congoleum Court found was that the extent of the insurance coverage in that case, under those circumstances, was a critical issue in the bankruptcy because it went to whether the plan was feasible and could be confirmed. But if found that it had to abstain from hearing the underlying insurance coverage action and that the State

Court, given the developments that have already transpired, was in the best position to address those issues.

So, under those circumstances, it's not surprising to me that the court who found it had to abstain would of course lift the stay to permit the state court to address critical issues that would be required to address in order for the case to proceed. That's a very different situation than we have here.

There is no allegation in Congoleum that the insurance coverage would require the adjudication of key issues that are relevant to underlying tort claims like we have here. There was no indication that lifting the stay would distract the parties from critical settlement efforts -- there was already a settlement there. And unlike in Congoleum, the insurance coverage action, and I think everybody agrees on this now, does not need to be resolved in order for the debtors to confirm a plan like it had to be resolved in Congoleum. And, again, that's because we have other sources of funding, Your Honor.

So, to conclude, Your Honor, I would just say that at this time these motions should be denied. But at a bare minimum, Your Honor, the insurer's request for stay relief should be at least deferred until after mediation, which may even include them. It may even narrow the issues further. It may even result in settlements. At that point in time, once

the mediation concludes, we could turn back to these issues. Thank you, Your Honor.

THE COURT: Thank you, counsel.

Good morning, Mr. Stolz.

MR. STOLZ: Good morning, Your Honor. Daniel Stolz, Genova Burns, local counsel for TCC1

Your Honor, I had intended to rise merely to introduce special counsel but I wanted to note two things. Number (1), this is something of a landmark date in this case since the debtor and TCC1 are in agreement on an issue in this case. That should be noted.

Number (2), as Your Honor is aware, I represented one of the non-debtor insureds in Congoleum and just to make the record complete, as Your Honor is aware, those same insurers who asked for a mandatory abstention wound up funding completely the debtor's confirmed plan in that case. And so in this case we suspect that the reason the insurers want to come to mediation is that they want to contribute and the debtor and TCC1 would like to receive their funds.

So, with that, Your Honor, I'll introduce Sarah Sraders from Gilbert LLP, proposed special counsel for TCC1 on insurance issues. There is a pro hac pending before Your Honor on Ms. Sraders.

THE COURT: Thank you, Mr. Stolz.

Ms. Sraders, welcome.

MS. SRADERS: Good morning, Your Honor.

As has been noted, the debtor and TCC1 are largely in agreement here that the automatic stay applies in this act to the coverage action and that the Court should refrain from lifting the automatic stay. So, I will not take up too much of your time this morning repeating what's already been said.

There are just a couple of things I did want to highlight. First, with respect to the insurance policies as an asset of the estate, the TCC1 continues to dispute the findings made in this Court's February 25th opinion but the fact remains that as we are now, the Court has concluded that the insurance policies are property of the estate. And given this and given that the Court has stayed all of the talc-related actions against the J&J entities, we see no reason not to conclude that the stay applies equally to the coverage action for the reasons that we've set forth in our brief.

So, given the Court's finding that these insurance policies are assets of the estate, we believe that these assets must be protected for the benefit of the creditors. And for that reason, we believe that the automatic stay clearly applies to the coverage action here. Despite the insurers' arguments, it's clear that a ruling from the New Jersey courts in the coverage action will deplete the assets of the estate.

The insurers argue that this is only a declaratory judgment action. That they seek only a determination of

whether the debtor's entitled to recover these proceeds and, therefore, the debtor can't lose what it never had. But this would, obviously, be true in any contract dispute where the contracting party sought to avoid the automatic stay. If the debtor loses, it didn't have the contract right it asserts. But obviously any court has yet to make that determination and that is not simply a foregone conclusion that needs to be discovered. This is something that the Court will have to determine based on the arguments from counsel.

And that, Your Honor, speaks to the harm that will really be at issue here for the debtor and, by extension, the TCC if the automatic stay is lifted. Allowing the coverage action to continue would mean that the debtor and the TCC1's focus would be diverted from the bankruptcy, so rather than focus on the mediation or resolution of the talc claims, the parties would waste their time, energy and resources litigating the insurance. And as you've heard today, there are still many outstanding issues that remain in the coverage action. And it's quite simply unnecessary for the parties to have to deal with these issues right now and distract from the mediation in order to address insurance.

Here we have both the debtors and the creditors agreeing that it is best for the parties to now focus on mediating a global resolution and deal with the insurance later. And as has been stated already this morning, Your

Honor, it is possible that given the interest of some of the insurers in participating in the mediation that the mediation be resolved in the order of rejection entirely. And while the distraction of the coverage action would cause harm to the debtor and the Committee if the coverage action were allowed to proceed, on the other hand, it is difficult to imagine how maintaining the stay here would possible result in any harm to the insurers.

The insurers do not lose any of their coverage defenses if the stay remains in place. No one can force a global settlement on them, and they are not deprived of a forum in which to eventually litigate their defenses. Instead, everything will simply remain as is while the debtor and his creditors work to resolve these talc claims. And as has been noted, the insurers get to hold on to the nearly $2 billion of proceeds that may rightfully belong to the debtor and that may eventually wind up being paid to the talc victims.

So, it's clear, Your Honor, that there is no harm that will result to the insurers here. Instead, the only harm will be to the debtor and the overall resolution of the bankruptcy. So, for these reasons, we think that the stay not only applies here but should not be lifted.

THE COURT: Thank you, counsel.

MS. SRADERS: Thank you.

MR. ROSS: Your Honor, let me just start off by

something I should have said in my remarks is, you know, the law is balancing a harm to the movants versus any harm to the debtor or estate, not to creditors. So, any harm to them is just not in the equation. That's the first point.

Second point I have is I'm just mystified. Your Honor sees far more cases than I do. And you have, as Travelers described, potentially billions of dollars of additional assets available and neither the debtor nor the TCC1 seems to have any interest in that -- in seeing that move forward and find out what that's all about. Just mystified by that. And you would think maybe that's a point where the Court should step in and say, well, look, it's our obligation to make sure the estate has everything that's coming to it and we really should be getting to the bottom of that as quickly as possible.

Now, I'd like to just address a couple points. Your Honor asked a great question about isn't the distinction between cases Mr. Frankel was referring to and the situation here that insurance was not required to fund this plan as opposed to those plans. It's a great question. Probably really begs another question.

And Travelers, I'm not sure I have read their policies, may not have this provision, but a central issue in the New Jersey Coverage Action you've heard this as the claims control provisions. And let me just read one of them --

they're all similar. And this is a quote, underwriters shall have full control over the defense and settlement of all claims or potential claims under the policy. So, the Court says, well, you know, let's just all make nice, we'll go to mediation -- that will satisfy them. No. We would be nothing more than some fly on the wall in that. I mean, we'd love to hear what's being said, that's why the motion got filed, but we wouldn't have any control, let alone full control over the settlement of all claims.

I mean, that's what the New Jersey Coverage Act is fundamentally about. There's, like 4. -- I may have the numbers wrong -- 4.5 billion in claims already settled. I guess that includes defense claims, too, which we had no say in, let alone full control over the defense that settled it. And the harm to us is we're continuing to be prejudiced and the mediation just prejudiced it that much more.

We have at ready -- we have ready to file on the day the petition was filed in this court, a summary judgment motion on that issue in the New Jersey Superior Court. And we were in the process of meet and confer, band toward meet and confer. We were told by McCarter and English, pull back a little bit more, and then they go and file a petition. And then they go and file a petition stopping us from filing a summary judgment motion. That's ready to go. You should, if nothing else, you should allow that to go forward because that's probably going

to be resolved before the mediation gets resolved. So, that's another overarching important point that I think.

Let me address a couple of these individual points that have been made by opposing counsel that, I'm sorry, very good counsel, good arguments, good briefs -- they're just wrong on some of these points and I don't think they should go left unsaid.

So, we're talking about whether or not they're a party, you know, for purposes of a automatic stay. They're not stepping into Old JJCI's shoes. Old JJCI went off in all different directions. That doesn't give you -- and they have to ask the Court for permission to intervene and it was said, well, I don't know the rule -- I'll read it to you because I think Your Honor asked exactly the right question. And the rule is New Jersey Court Rule 4:33-1 and it says intervention is proper when the intervening party now, quote, claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the ability to protect that interest unless the applicant's interest is adequately represented by existing parties. Your Honor correctly asked isn't J&J and the debtor aligned in the New Jersey action and the answer was, yeah, we're perfectly aligned -- they basically conceded.

THE COURT: But are they perfectly aligned?

MR. ROSS: I don't know. That's their answer.

THE COURT: Well, I don't have to accept their answer. There's an indemnification obligation, right? So that, ultimately, the debtor has to come up with whatever the obligation is even if J&J falters in its defense in the insurance.

MR. ROSS: Well, with all due respect, I would submit that's meaningless given the backstop. So, you know, it's just a circular flow of money and I don't think that would satisfy this rule. The Court is likely to say J&J is doing a pretty good job. McCarter and English is doing a pretty good job on this.

THE COURT: The backstop is to fund talc claims.

MR. ROSS: And that's what --

THE COURT: Well, no, not necessarily recovery --

MR. ROSS: Of talc claims which is --

THE COURT: But just limited to talc claims, correct?

MR. ROSS: That's correct but that's what the New Jersey Coverage Action is about -- talc claims. And so I would submit to you, that means they are not only not a party but can't be a party under that.

There is another comment made by debtor to the extent that Congoleum is all we relied on. That's not right. The exact same conclusion was reached -- the exact same holding bankruptcy court, here Southern District of New York in the In

In re Burger Boys case, which we cite in our brief, and by the Ninth Circuit BAP in In re Calkins that same holding. This is -- I couldn't find any cases to the contrary. I believe it is the law that if you show mandatory abstention you have established cause. And we have shown that here. And I really didn't hear any argument against mandatory -- I heard why they argue we're different from In re Congoleum. I'll get to that in a second. I didn't hear any argument that mandatory abstention does not apply and, therefore, I think that's the starting point the Court has to accept that since we established it in our opening papers and nobody came in to rebut it or refute it in any way.

So, let's move on to Congoleum.

THE COURT: Although, in fairness to you, rather than as part of any ruling 1334(d) -- 20 U.S.C. 1334(d) -- let me read it. Subsection (c) which is the mandatory abstention provision and this subsection shall not be construed to limit the applicability of the stay provided for by Section 362 of Title 11.

And I found In re Conejo Enterprises 96 F.3d 346, a Ninth Circuit decision. This subsection, which is the mandatory abstentions provision, this subsection shall not be construed to limit the applicability of the stay provided for by 11 U.S.C. 362 and, as such, that section applies to any action affecting property of the estate.

So, I'm not so sure, simply, if I may agree, a mandatory abstention applies, but that mandatory abstention is dispositive.

MR. ROSS: So, here's my argument, Your Honor. By plain terms, what that section is saying is that I cannot get up here and argue the automatic stay does not apply because of mandatory abstention. That's why I was careful to say if you first decide that the automatic stay applies, then we have to show cause which is a separate section than the one Your Honor read. And what I am saying to you is In re Congoleum and these other cases say cause is established by showing a mandatory abstention. I'm not arguing that mandatory abstention means there is no stay in the first place. I'm simply saying we are then entitled to relief from a stay that does exist.

THE COURT: Well, in fairness, that's inconsistent with the case I cited which held first, a finding that mandatory abstention applies to the underlying state action does not preclude denial of relief from Section 362's automatic stay. And it's unfair to have you respond -- you haven't read the case. I appreciate that. I'm just --

MR. ROSS: No, I'm perfectly -- no, I understand what the Court is trying to say there. I'm familiar with these -- not that case -- these cases is they're saying that there are circumstances in which, you know, the way it works is we show cause then the burden shifts to the. There are circumstances

in which they can show sufficient burden to overcome that. That's what I believe that the Court is saying there -- a burden that was on them to come forward with that harm.

And as Mr. Frankel argued and we say in our brief, we don't think they've done that. There's no real distraction. That the E and I issue, as Frankel so artfully said, was largely resolved, it's just a question of getting a judicial ruling on it. I mean, that's when the court issues here, he's trying to distinguish it in In re Congoleum in saying, wow, we've moved along. Congoleum hadn't moved on that far.

At the point in time the Judge ordered that, there was not a trust in place. It was before that. It was in anticipation -- well, we might need some help on that and local counsel is correct that they then didn't need it because there was a resolution. But we don't know what's going to happen. We have and, in particular, we have this claims control provision which is central -- which is all teed up -- doesn't need discovery, is ready to go in the New Jersey Superior Court.

And it seems to me that's kind of an important thing that ought to be decided and to the extent we're forced to go into mediation without full control over settlement, we're being really significantly harmed. And that harm, you know, a deprivation of a core right upon which the insurance was issued in the first place, this control over settlements, is being

taken away from us. And that ought to be sufficient when coupled with mandatory abstention it would be any burden on their part, my view, respectfully submit, Your Honor.

THE COURT: Fair enough.

MR. ROSS: And that is our argument. Now, I want to add one other thing. I don't know what the Court is contemplating as far as ruling from the bench, but in the past --

THE COURT: I don't have it in me to write anything else.

(Laughter)

MR. ROSS: We would really give you the copyright rights to our brief if you can just adopt that if you would prefer. But, Your Honor, in the Duro Dyne case, just one example of several, they basically said, you know, there are good arguments on both sides here.

You didn't say this but, in fact, maybe we should split the baby and talked about it and in that case you ended up saying -- and I don't remember what month it was, it was filed in September and you said, you know what, I'm going to give you a couple months to try to get this worked out and then March 1st the stay's lifted, we get back into that litigation in the Duro Dyne case.

You've done this in multiple instances where you say pieces of the litigation can go forward or we'll set some

deadline. You know, here it would be give the mediation whatever you think necessary -- 90 days, 120 days, whatever and then the stay's gone if you can't get it done. It would sort of light a fire under people. Or let certain individual pieces go forth like this claims control provision.

Summary judgment's ready to go. Why should we wait on that? There's third-party discovery that's outstanding. I mean, there's a real risk here of spoilation of evidence, loss of evidence, particularly the way corporate record keeping provisions are nowadays where you automatically dump stuff after a certain point in time.

So, I mean, if you're thinking of ruling now and you're not -- you're disinclined to grant us complete relief from the stay, I mean, I would invite the conversation as to something less than that, unless you think that's also inappropriate.

THE COURT: Fair enough. Thank you. Thank you, counsel.

MR. FRANKEL: I'll keep it very brief, Your Honor. Just a quick couple of follow-ups. On the harm to the debtor, I really don't think you heard anything other than a suggestion that despite the fact that we have McCarter and English as insurance coverage counsel, despite the fact that we have Jones Day and our army of defense counsel that used to deal with underlying claims that the debtor can only focus on one thing

at one time and somehow this would be a distraction. I don't think there's any credibility to that argument or support.

I do want to really, briefly touch on this other argument that they made that there's going to be this collateral estoppel risk and record taint and that the insurers are going to litigate issues that are directly implicated in the, you know, in the underlying merits of the talc claims and an estimation proceeding.

First of all, from a big picture perspective, while the insurers and J&J dispute coverage issues which, by and large, are very different than the issues in the underlying talc cases, the insurers in J&J have a common interest in the defense of the underlying talc cases. So, it's in nobody's interest to go out and cause harm to J&J in any of those cases.

And the "E" and "I" issue, the expected and intended issue is really just a red herring. They have it backwards, Your Honor. Take the Ingham judgment for example. Ingham is a case it went to trial, there's a judgment, there are claims that were decided by the jury and the jury made its judgment. And the courts explained this is the basis for liability, these are the findings that were made.

In the expected and intended issue, for purposes of coverage, we don't go retry the Ingham case. We don't put J&J on trial and say, you know, you caused this harm. You expected the harm. Let's litigate that issue. That's already been

done. Whatever record came to collateral estoppel effect might exist is as a result of the underlying case.

So, just like my colleague is ready to file a summary judgment motion on the claims control, as I indicated at the outset, we're prepared to file a summary judgment motion on that issue as well. But there would be no collateral estoppel effect. The Court would say, well, here's the findings that were already made in that case. Now let's hold that up against the policy language that says, you know, an occurrence does not include injuries that were expected and intended. There's no record taint, there's no collateral estoppel effect and because of the common interest that exists because of the insurers, I mean, we could share privileged information based on that common interest.

It's in nobody's interest to do anything that would interfere in any way with an estimation hearing By the same token, or on the other hand really, we've heard a lot about, you know, both from the TCC and the debtor that, you know, what's the harm and just wait, just wait. We'll resolve these cases, you could participate in the mediation. Nobody has suggested that they're not going to be looking to the insurers to pay what could be a massive settlement or that nothing in the plan will have any impact on the insurers rights or obligations. I mean, if we all stipulated to that, we'll pack our bags and go home.

But as I said at the outset, the fact of the matter is that bankruptcies, although Your Honor is going to keep a tight leash on this case, you've made that very clear, virtually -- not virtually -- the norm in these cases is that, ultimately, it could take years for a bankruptcy resolution. And these insurance coverage issues are not going to go away. It's not going to make it any easier to resolve either the underlying cases or the insurance coverage case without having the Court, that's experienced in these issues, available to issue rulings on some of these issues in the meantime. Thank you.

THE COURT: Thank you, counsel.

Anything else in response?

(No audible response)

All right. Thank you, all. Well argued.

So, as I've indicated, I don't have it in me to write anything more. I'm going to try to put something together from the bench now.

These matters come before the Court on the motion filed on behalf of Travelers Casualty and Surety Companies seeking relief from the automatic stay to allow a New Jersey coverage action to proceed at Docket 1488, as well as the motion by, we'll call the moving insurers.

With respect to the New Jersey coverage action, the plaintiff insurer seeking an order either confirming that the

automatic stay does not apply to the New Jersey coverage action or, alternatively, granting relief from the automatic stay. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Section 1334. This is a core matter under 28 U.S.C. Section 157(b).

Let me start where I had touched on before and it probably comes as no shock that not every bankruptcy judge within a district agrees. We tend to sometimes go our own way. I respect Judge Ferguson, but to the extent she indicated in Congoleum that mandatory abstention alone is dispositive of the issue as to whether there should be stay relief, I disagree, respectfully. I believe the statute provides otherwise and the statute being 28 U.S.C. 1334(d).

I respect the decision of the Ninth Circuit in its indicating in In re Conejo Enterprises at 96 F.3d 346 that a finding that mandatory abstention applies to the underlying state action does not prelude denial of relief from the automatic stay and it cited to 28 U.S.C. 1334. Is a coverage action a claim against the estate? There has been briefing and argument on that issue.

I believe counsel even referenced it this morning as a contract action. That's actually consistent with what and how Judge Walrath moved in In re Mobile Tool International, a bankruptcy court in the District of Delaware case, 320 B.R. 552 in which she indicated that, in contrast, Great American's

action seeking a declaratory judgment about the scope of the insurance coverage is a claim for breach of contract, in essence, it's a breach of contract claim.

For this Court, there are a lot of issues that we could delve into. I am going to focus on 362(a)(3) as to property of the estate. I recognize that the policies, themselves, have not been assigned -- I don't think there's a question as to that. That may have an issue or have a bearing later on in the case if settlements in which debtors sell back policies to insurers, that may be difficult -- I'm sure you're all gong to be creative and get around it.

But certainly the debtor was assigned interest in the policy in order to have the right to make claims. The right to make claims under the policy is an interest in the policy as far as this Court is concerned. And as such, knowing the breadth of Section 541(a) and what is considered property of the estate, the ability to make claims under a policy are certainly rights and interest which are deserving of the protection of the automatic stay. And therefore 362(a)(3), in this Court's view, is applicable.

And continuation of the coverage litigation in the state court, if the insurers are successful, let's be honest, if they are successful, it would deplete or diminish the coverage, which would have an impact on the debtor's rights to be able to pursue and file claims under the policy. I think

it's apparent. So, the automatic stay applies.

The question is -- the more apt question is whether or not there is cause for stay relief. And primarily the Court is looking weighing the respective harms. The harms to the insurers in further staying the action versus the harm to the debtor in allowing it to proceed. And the Court is persuaded that, to date, in light of the fact that after three plus years along the business track, the insurers' coverage dispute has, for the most part, completed paper discovery prior to dispositive motions, without expert discovery, without depositions.

I am not sure that a short period or a limited period of further inaction in that case truly prejudices the insurers any more than what has gone on in the case to date. A three year old case is not a new case, but it hasn't progressed substantially. And that's by no means intended to be a slap or a derogatory reference to the state court. We all know what's gone on in the last two or three years in COVID and everything else, so I appreciate it. But it hasn't progressed to expert testimony. It hasn't progressed past fact discovery and paper discovery or depositions.

And, frankly, I don't believe I want to see the debtor's personnel, the debtor's counsel, TCC's counsel, involved in having to expend the time and energy and create additional administrative expenses at this juncture while also

trying to pursue what should be the focus in this case, which is the mediation efforts.

The mediation efforts are paramount and to have to defend discovery efforts in which some of the defenses that are targeted bear on the issues in the Chapter 11 case would be unfortunate and time consuming and expensive and truly lacking, in my view, the end result lacking any meaningful prejudice.

I've often said, somewhat tongue in cheek, in insurance defense work, if the money remains in the insurer's pocket and they don't have to expend on counsel, that's usually the game plan. And so if we have some time, the insurers aren't expending money, they're not making payments and a short stay to allow the bankruptcy mediation process to move forward, I believe, offers little harm to the insurers while, certainly, benefitting the bankruptcy estate by allowing counsel, all counsel involved including the co-mediators, to focus on something that this Court views as being paramount.

As to the counterclaims, I believe counsel is correct. Under the Third Circuit decision in St. Croix those are stayed as well because the underlying action is against the debtor and, therefore, I would be disinclined to grant stay relief to allow counterclaims to go forward at the same time so as to not prejudice the insurers.

I think counsel probably, deservingly so, has picked up on this Court's style in trying to take things in pieces.

And a breathing spell and the breathing spell envisioned by the automatic stay and by Congress is not unending and I am prepared to carry these motions until June 14th. That's about 90 days. And I know half of you are taking bets, have already said, that, I knew that, but I think it's appropriate. It allows the mediation to at least move forward. We can get a sense of whether there will be a negotiated resolution whether the Circuit decides to step in -- we'll be discussing that in a little bit now -- and make all of this moot. There's so many different possibilities.

So, again, yes, I recognize that the insurers are losing some time. Clarity -- clarity can come three months or so or even if I continue it longer, further delay I don't believe is prejudicial. What I will do is simply carry it to the June 14th date so that nobody has to re-file motions and in anticipation of that, the parties one week prior to that date an advise the Court of their position as to whether or not they believe there should be further action on the automatic stay but I think that's the most pragmatic and fairest result that we can do at this juncture.

Are there any questions, counsel?

MR. ROSS: No, Your Honor. Thank you very much.

THE COURT: Counsel?

MR. PRIETO: Your Honor, the only clarification and I think this can be done by consent with the other party but we

=would want automatic termination to occur by the adjournment. I haven't looked back at the statute to make sure that that's not implicated by the adjournment of the stay motion but --

THE COURT: 362 --

MR. PRIETO: Yeah. If you could just have the insurers confirm that they consent to the adjournment in a sense that the automatic stay won't be automatically lifted.

MR. ROSS: We understand and agree, Your Honor. We understand what you're doing. You're just postponing the motions to the 14th.

THE COURT: Thank you.

We'll mark this order to be submitted, both motions 8 and 9 ordered to be submitted. It could be a consent order by the parties.

Again, unlike in Duro Dyne I want to make it clear I'm not automatically -- the stay is not automatically being terminated on a specific date. Duro Dyne was a little different that progressed much further. In fact, they were looking, I think, for reconsideration on issues in Duro Dyne There had been resolution on summary judgment. And it also took years. So, it's a little different than where we're at, at this point. All right? Thank you, counsel.

UNIDENTIFIED ATTORNEYS: Thank you, Your Honor.

THE COURT: Insurers' counsel are welcome to stay and enjoy the festivities.

You know what, I'm sure people need a break. So, it's a quarter to 12, why don't we take a ten minute break -- five to 12. Thank you, all.

(Recess)

THE COURT: All right. We will continue on.

There have been questions regarding whether we're going to break for lunch. As my next comments would suggest, I don't think we're going to have to. I'm hoping we can get done by one o'clock.

In that regard, I want to address the motions seeking certification to the Third Circuit. I am prepared, you may have had a sense from my comments on the last motion, to issue a ruling on those motions without further argument. I don't want to cut anybody short, though. If there's anything anybody wishes to add, I'll certainly be glad to listen. I could always have my mind changed but, otherwise, I'm prepared to rule on the hundreds of pages of briefs that you've all given me.

Mr. Molton?

MR. MOLTON: Your Honor, David Molton for TCC1. We're comfortable with Your Honor taking in the papers and ruling on the papers. We believe that all the positions were put forth in those papers and, you know, the briefing was of the highest level so we're comfortable with Your Honor going forward.

THE COURT: Thank you, Mr. Molton. Thank you, counsel.

On the debtor's side?

MR. GORDON: Greg Gordon on behalf of the debtor.

It kind of depends how you're ruling.

(Laughter)

THE COURT: Want to flip a coin?

MR. GORDON: I'm joking, obviously. The only reason I'm hesitating is, obviously, we didn't get the last word on this and there were some things in the briefs that we are going to comment on in the reply briefs, but --

THE COURT: If you want to take a few moments, I'm comfortable. I don't want to short-circuit any issue. It's up to you.

MR. GORDON: Well, can I have about two minutes to think about it?

THE COURT: You certainly can. Is it going to be another PowerPoint?

(Laughter)

MR. GORDON: It's going to go to waste, Your Honor.

THE COURT: Well, a hundred and sixty-seven people are going to miss out.

MR. GORDON: I'm sure we can circulate it anyway.

I think we're good, Your Honor.

THE COURT: All right. Thank you, Mr. Gordon.

MR. GORDON: Thank you.

THE COURT: Thank you, counsel. I appreciate the cooperation and the professionalism.

As Mr. Molton noted, everything was extensively briefed and briefed well.

Let's turn to, specifically, on the agenda today I'm going to address Number 12, which is Number 5 on our CHAP calendar. Number 13, which is -- well, let me start.

Number 12 is the Official Committee of Talc Claimants 2 with related claimants. Motion seeking certification for the Third Circuit of the orders with respect to the motion to dismiss and a preliminary injunction.

Number 13 on the agenda, Number 12 on the calendar, is the similar motion filed on behalf of the Official Committee of Talc Claimants 1.

Number 14 on the agenda, Number 13 on the calendar, is the similar motion filed on behalf of Aylstock, Witkin, Kreis and Overholtz.

And Number 15 on the calendar -- on the agenda and 14 on the calendar is the request of Arnold & Itkin for certification for direct appeal.

There are also -- Numbers 16, 17 and 18 are the related requests relative to the preliminary injunction adversary proceedings.

So, before the Court are multiple requests and

opposition of course filed by the debtor seeking certification by this Court under 20A U.S.C. Section 148(d)(2) to the Third Circuit, requests of the Third Circuit to take direct appeals with respect to the Court's motion denying -- I'm sorry -- order denying the motions to dismiss the Chapter 11 proceedings and also the Court's order entering a preliminary injunction in the adversary proceeding, and the Court is going to address both of those orders together.

Essentially, under 28 U.S.C. Section 158(d)(2) the basis for certification are that the orders must involve questions of law as to which there is no controlling Third Circuit or U.S. Supreme Court decisions, or the orders involve matters of public importance, or that an immediate appeal will materially advance the progress of the case. There's a fourth factor as to resolution of conflicting decisions which of course is not relevant because nobody has made decisions on these issues.

Let me turn to the last prong, materially advancing the case. Given five days of trial, hundreds of pages of briefing, thousands of pages of exhibits, countless PowerPoints, and over 110 pages of written opinions by the Court, I have my doubts that the record needs further development in the District Court, or that the District Court would -- a review of the appeals would add anything truly of value both from a legal argument perspective or factual

perspective to aid and assist the Circuit, should it decide to take the appeal.

It seems senseless to me for issues that are going to be pursued, I have from every indication as far as possible up to the Circuit, if not beyond, that to have the parties expend the time, energy and funds -- and have essentially truthfully at the debtor's -- on the debtor's dime for most of it, in the estate on an intermediate level appeal doesn't serve any purpose. It delays the progress of the case. As I said, it is doubtful that the record would be amplified for the benefit of the Circuit. I think everything the Circuit would need if it chooses to hear these matters is in the record. The issues are exhaustive and have been laid out, at least from what I could tell in these motions. So, I think the third prong, in and of itself, has been satisfied.

Going back to are there -- do the orders involve questions of law as to which there is no controlling Third Circuit or current Supreme Court decisions, I have been able to glean -- there are countless issues. Some merit review by the Circuit. I would suggest some don't.

From what I could tell in reviewing the briefs there are significant issues for which there are no controlling decisions. I have penned them as follows. Number one, whether after a pre-petition corporate restructuring in which liabilities are assigned to the ultimate debtor can the Court

take into account the assigned liabilities and financial condition of the predecessor in evaluating financial distress for purposes of good faith? Now, these -- I'm not saying these are how you all are going to be framing them, but they are generally on target.

Number two, whether the financial distress for purposes of good faith can be based upon anticipated future liabilities associated with future litigation.

Number three, is there a requirement or standard for the degree of stress facing a debtor for good faith purposes?

Four, whether the Court's analysis of the relative merits of the bankruptcy system and the state and federal trial systems can be part of the analysis of good faith, and specifically the analysis of whether there is a proper bankruptcy purpose, or included in the totality of the circumstances test in determining a motion under 1112.

And seven, whether engaging in a pre-petition corporate restructuring which assigns liabilities to an entity which ultimately files bankruptcy while allowing the residual business enterprise to continue operating outside of bankruptcy constitutes bad faith or precludes a good faith finding as a matter of law.

With respect to the preliminary injunction I will tell you I find it more difficult to identify controlling issues that have not been addressed. The issues in the

preliminary injunction litigation were not uncommon. The parties are correct that this Court did reference the fact that the source of authority to extend the automatic stay generally and specifically to non-debtor joint tortfeasors hasn't been addressed on point by the Circuit. I personally believe the McCartney decision does address the issues, but I certainly have no problem allowing the Circuit to refine their analysis.

The truth is the preliminary injunction adversary proceeding was bottomed on this Court's determination that there was a proper bankruptcy purpose, and there was a likelihood of a successful reorganization, two of the prongs. And those are intertwined with the issues that are -- and the questions of law that are wrapped and included in the motion to dismiss. So, the Circuit should have the ability to decide to take both or neither if it so chooses. It does not make sense to the Court to have the preliminary injunction appeals pending and litigated in the District Court at the same time the Circuit might be considering the motion to dismiss order. If anything, one would probably -- one Court might defer, the District Court might defer until there's been a resolution.

As to public importance, I think the parties agreed on a standard that the issue -- the questions, not necessarily legal questions, must transcend the litigants and involve legal questions which implicate the public and developing jurisprudence. I can point to -- there was an article that

came out a few days ago, "J&J's Victory Over Cancer Victims Clears the Pathway for 3M and Dow Chemical and Others." Clearly -- whether you agree or not, I am being blamed for a lot. But clearly this goes beyond the litigants, even though there are tens of thousands of litigants, and the Court recognizes the claimants in these cases. But this impacts decisions and restructurings or potential restructurings beyond what's being litigated in this court.

The Court recognizes that the question of the proper venue to litigate mass tort cases has been brought to the forefront, and has generated the interest, as I've indicated, of policymakers, media, a few very nasty people on Twitter, and the like, but that the Circuit may indeed wish to address these matters in the short term.

The Court also takes into account the dollars involved. We're talking about billions upon billions of dollars, and thousands upon tens of thousands of potential claimants, all of which I think warrants the opportunity for the Circuit to address these issues at this juncture in the short term.

As to the procedural issue I had raised I think at the last hearing, whether or not the motion to dismiss order was interlocutory, in reading Rule 8004 I don't think, and I would agree that the Circuit can, if it accepts direct certification, allow the interlocutory order to be appealed. I

will say though I'm not convinced that should the Circuit decline certification, that whether or not the motion to dismiss order is interlocutory I believe still remains an issue for the District Court in light of Bullock and Ritzen, because then you don't have the safety net of Rule 8004. It's not something I have to decide, thankfully, but I just lay it out there.

So, with that -- and I appreciate the debtor's professionalism in not extending the argument, but I do think the interests of the public and the Bar are served by allowing this -- allowing these issues to percolate to the Circuit directly, and I will be granting the motions.

Let me defer to counsel for the movants. I would think there should be one order granting the motions. I don't know if you want to submit an order on all of the motions. Do you have a preference, because I have three different, or four different motions?

MR. MOLTON: Your Honor, I just took a sense of all the movants. David Molton for TCC1 again. And I think we'd put together a proposed order for all the movants in one single order, and vet it, of course, with the debtor before getting it to you.

THE COURT: All right. Thank you. I think that's preferable. So, we'll mark these ordered to be submitted. Thank you all.

All right. Let's move to Number 10 on the agenda, Number 4 on the calendar, and I'll probably want to take up both, the issue of continuing TCC2 for purposes of the appeal, their pending motion, as well as the appointment of a second FTCR. Counsel?

MS. SPECKHART: Thank you, Your Honor. Good afternoon. Cullen Speckhart for the record of Cooley LLP, appearing on behalf of TCC2, Your Honor.

I'd like to go about my discussion of Agenda Item Number 10 by being direct, and by acknowledging, in the interest of complete candor, that the reality of where we were when we filed this motion is a very different place than we find ourselves today.

We filed the motion on March 7th for its stated purpose of requesting that this Court maintain TCC2 intact to protect the appeals, and to continue their separate prosecution on behalf of the parties that continue to pursue them separately as a distinct group of mesothelioma claimants that independently participated in the trial.

And I want to be as transparent as I can in addressing this with Your Honor because while it remains a matter of critical importance for us to protect the independent appeals that we independently filed following our separate and distinct prosecution of our objectives at the trial, today we are here for a much broader purpose because we are committed to

the cause that Your Honor described earlier today as the paramount priority in the case.

Now, what has transpired since the time that we filed this motion, there are a few examples of some critical events.

First, Your Honor, we expressed to the Court on March 8th that we're here in good faith to assist the process constructively by negotiating with the debtors on parallel paths in mediation. Now, on that same day Your Honor appointed Judge Schneider and Gary Russo as co-mediators. We, as Your Honor recalls, reserved rights on that. We deliberated with our group, and ultimately in the spirit of cooperation we informed the Court via correspondence to Your Honor on March 10th that we agreed with the co-mediators.

Now, Your Honor permitted the continued separateness of the committees through April 12th to allow for parallel negotiations to begin, and on that basis we collaborated with the parties on the material which was later memorialized by the mediation protocol, which was approved by Your Honor and entered on the docket at Item 1780 on March 22nd. And that order is important because it specifically designates and defines TCC2 as a mediation party in Paragraph 3, and provides for the mediation to include events marching out through the end of May, which is proximal, perhaps not coincidentally to the expiration of the preliminary injunction in June, and we recognize that the Court is taking this matter in pieces and

parts quite appropriately and correctly.

Now, a little later in March, at the hearing on the mediation protocol, I believe that was March 16th, when various parties raised their hands asking to be included in the mediation, Mr. Gordon responded that the debtors are supportive of the mediation parties as indicated in the protocol, and as we know, those parties included both TCC1 and TCC2 as separate mediating entities.

And, Your Honor, without giving away any confidences or divulging any information about the substance of the mediation I will represent that the dual track of the mediation is proceeding with a number of different work streams and points of analysis underway at TCC2 to explore whether a deal can be reached, and that remains our objective because we believe, as I've said before, that the best resolution here is a consensual resolution that is based on two separate tracks of negotiations. And that is the process that's been established in the mediation protocol. We want to see it through to its conclusion, just as Your Honor contemplated when the Court entered the order.

And just as we want to be forthright with our negotiating counterparties, Your Honor, we want them to be straight with us. We want them to engage with us to try to reach a deal that satisfies both groups of creditors, and we don't want the debtor's attitude or anybody else's attitude to

be that all they have to do is wait it out until April 12th or some other date because our request advanced in mediation will disappear along with the parties that made them. That construct, we believe, is rife with the potential for delay and gamesmanship, and like I said to Your Honor, we are here to be fair in our negotiations and our dealings with the Court, and to comport ourselves with integrity along the way.

So it's no secret that we take issue with a number of things that the debtor have determined to do in this case, but I give Mr. Gordon the credit he deserves as a professional, and I would like to believe that the debtor embarked on this process of mediation on a parallel path, and endorsed the protocol because it believes and intends to mediate with the designated mediation parties in good faith for the duration.

And I strain to think that the debtors could have believed that a healthy consensus producing mediation would involve a fundamental change in the mediation parties midstream, or that such a result would be fair to the mediators who are obviously working tirelessly to try to achieve consensus in this case. That would have been rather disingenuous indeed, and we don't attribute those motives to any party involved in this process.

So, I will not speak for Mr. Molton. I know he does intend to address the Court. But given that TCC1, and I believe the mediators, and I believe that TCC2 are satisfied

and comfortable with the current process, we would ask Your Honor to maintain the separateness of the committees intact for all purposes, including the mediation and the appeals so that we can continue in the most direct way towards the ultimate goal in this case, which is to achieve an appropriate resolution of all outstanding issues in a way that is fair and efficient, and comports with the Court's expectations of the parties governing themselves in the interest of effective case management.

THE COURT: Thank you, counsel.

MS. SPECKHART: Thank you, Your Honor.

THE COURT: Mr. Molton?

MR. MOLTON: Your Honor, we put in a statement, and I am going to -- I think it just -- I had talked with Ms. Speckhart about sequencing, and I know Mr. Gordon put in an objection on behalf of his client, but I think it's important for Your Honor to hear from TCC1, who all of this would have an impact on one way or another, however Your Honor goes.

I am going to support what Ms. Speckhart said with respect to what's happening with the word that I guess we're not supposed to use, unless we're given approval to, but the mediation. But, needless to say, we will address the fact that in accordance with Your Honor's order it has begun. I think Ms. Speckhart is right that both -- all the participants, and that includes the debtor at this point, TCC1 and TCC2 have

engaged fully with the mediators, I think Ms. Speckhart is right again that there are various data analyses and data points that are going on with the mediators at this point independent of each other. So, the present structure from TCC1's point of view, looking at Your Honor, and I heard a date before, June 14tn, and that to me was a very important date, and I'll get back to that in a minute, but that seems to be the reporting date or soon after the mediation orders deadline for a mediator's report on the status of the mediation.

So, as events have really taken over some of what has happened with respect to the two committees it looks like we're looking at a three-month period henceforth, or two-and-a-half month period of intense attempt at resolution on all sides, and the structure that is in place from my perspective should be the structure that continues in that -- to that point.

So, I am going to support on behalf of TCC1, and we support, and I want to put that down as a marker that TCC1 supports the continuation of the present structure through the goal posts, so to say, or the milestones that Your Honor has in fact constructed for the next April, May, two months, 60 days plus two weeks until we get to the next omnibus hearing.

Further, Your Honor, this makes practical sense because in the event Your Honor would say, well, TCC2 can continue for a particular purpose, say the appeal, which was the original ask of Ms. Speckhart and her committee, that puts

us in a very peculiar situation, Your Honor, where TCC1 would then arguably become TCC0.0 again, bringing back in our former members --

THE COURT: Right.

MR. MOLTON: -- from the mesothelioma committee, yet TCC2 would exist for the purpose of the appeal, and what would then happen with respect to TCC1's own viewpoint on appeal issues. And that's why we put in the statement, Your Honor, that if TCC2 were given that life for a specific subject matter it creates some confounding perplexities, including the fact that you might have to have TCC1 and TCC2 continue to exist for the purpose of the appeal and then return to TCC0.0 for all other purposes, needless to say, a situation that I think we all would like to avoid.

So, from a practical point of view, Your Honor, it makes eminent sense to continue the structure to that day in June that I think Your Honor noted in connection with the insurer's motion, and we can also use to revisit these issues when we know what has happened at that point.

I do want to note, Your Honor, that in light of Your Honor's decision, which we were pleased about on the certification issue, and I do want to reiterate that the briefing from all sides was just spectacular on that issue, and I hope it helped Your Honor --

THE COURT: It did.

MR. MOLTON: -- avoid two hours of further discussion now. So, in any event, it would seem to me, as we did in Perdue, it may be that we go to the Third Circuit not only with the certification, but a request for expedited briefing.

Judge McMahon's decision on Judge Drain's confirmation order in Perdue is going to be heard actually next -- this month, I mean next month, April 29th. So, the Circuit can work fast when it wants to. And that would -- if that sort of briefing comes together here, and I'm not going to presuppose what the Third Circuit may or may not do, you actually have a pretty logical track of the mediation. Again, I dare to use that word, but it's -- we've used it today. A number of people have used it and we have a public order. But we have a mediation that has a set time frame with a look see in mid-June, and you might have at the same time a parallel track in the Third Circuit, both of which I think help each other, in my view and our committee's view.

So, with respect to those issues, and I do know, and I don't know if Ms. Speckhart addressed, she did not address the two FCR -- FTCR issue, Ms. Cyganowski --

MS. CYGANOWSKI: Not yet.

MR. MOLTON: Not yet.

THE COURT: Right.

MR. MOLTON: Ms. -- suffice it to say we have a different view than TCC2 on that issue.

THE COURT: Correct.

MR. MOLTON: A very different view. And you'll hear from that in a minute. And I don't want what I'm saying here to prejudice what Ms. Cyganowski is going to say shortly. But it would seem to me that maintaining the structure that Your Honor has carefully built under challenging conditions would be a positive thing for the reasons that I've said. So, that's why TCC1 stands here and supports Ms. Speckhart's request, at least for the purpose of maintaining the structure through that omnibus date on June 14th.

THE COURT: All right. Thank you, counsel. Ms. Jones, good afternoon.

MS. JONES: Good afternoon, Your Honor. Laura Davis Jones with Pachulski, Stang, Ziehl & Jones on behalf of Arnold & Itkin. Your Honor, I will confess this is the first I'm hearing this. We had not taken a position because the request was that TCC2 would be staying in existence for purposes of the appeal. That was the request of this Court. That's what was noticed up for hearing today.

Again, Your Honor, we're finding TCC2 continuing in what I think is becoming a little bit of a bad habit, which is that they have creeping requests and they tend to be at the very last minute.

Your Honor, from our perspective this is troubling. While I understand what Mr. Molton said, I understand what Ms.

Speckhart said, Your Honor, this idea of creeping requests cannot be granted when they're in violation of due process, and this is not what was noticed up for today. And again, Your Honor, it's the second time that we've had this issue.

Your Honor, the TCC1 and TCC2, obviously, did not like this Court's ruling with respect to the two committees, and the vacatur of the two committees that were set up by the Trustee's Office. This is, Your Honor, just a continuing end run around Your Honor's order. We had it. Your Honor had vacated the new committees. There was then a request, but, Your Honor, we've put so much work in on the dismissal, we were here through the whole trial, we need to be here, at least, Judge, let us finish the trial. Oh, at least, Judge, let us do the appeal. Nobody can do it like us. We are separate. We are important. We need to be here for the appeal. And Your Honor was willing to hear that today, and from your comments at our last hearing I believe Your Honor would have granted that, and indeed, we did not take a position against that. We saw the wisdom of that.

Your Honor, now we're going the next step. Judge, understand us, we were here for the trial, we were here for the appeal. Now we're in this mediation that none of us can talk about. And indeed, Your Honor, Arnold & Itkin is not in that mediation.

So, Your Honor, my concern is that now -- I think

what I'm going to hear next is as we take this task by task, project by project, is that, you know, we might as well swing for the whole enchilada and say, you know, Your Honor, we were here for the dismissal trial, we were here for the appeal, we were here for the mediation, we need to be here for plan confirmation.

And, Your Honor, as you have seen in our papers in connection with the second FCR, and I know we will come back to that, Your Honor, this is an end run around Your Honor's ruling, and it is an elevation of representation of a full statutory committee for claimants who represent less than one percent of all the asbestos claimants now being able to take this position and keep moving with it.

Your Honor, it's unfair. It's contrary to Your Honor's ruling. Frankly I think it's disrespectful to the parties. I do not think it was meant with disrespect to the Court. I think it's just a bit clever. And, Your Honor, we suggest that this not be sanctioned, and that you deny the request, Your Honor. Thank you.

THE COURT: Thank you, Ms. Jones. Mr. Gordon? Or --

MR. GORDON: Greg Gordon on behalf of the debtor, Your Honor. Not to disappoint, I do have a short PowerPoint.

THE COURT: Whew.

(Laughter)

UNIDENTIFIED ATTORNEY: We were going to be very

disappointed.

MR. GORDON: So, Your Honor, there's really three fundamental points that I am going to cover today. And I will, during the course of this, respond to some of the statements I heard just this morning, as well.

So, the first, Your Honor, just to reset, and this follows up on Ms. Jones' point, this again is coming all at -- at the very last minute, and it is a moving target in terms of what the relief is that's being sought by TCC2.

THE COURT: That's okay. I can see it here. Thank you.

MR. GORDON: We have plenty of those, Your Honor.

(Laughter)

MR. GORDON: So, if you'd just look at this time line of events, and I'm not going to cover everything on here, I mean, this dates all the way back to December of last year, and that's -- on December 23rd was when the U.S. Trustee filed its notice.

And I think as soon as we were in front of Your Honor after that, on December the 30th, we indicated that we intended to object, as did Arnold & Itkin, on the basis that we thought that was improper, that the U.S. Trustee, given what had happened in North Carolina and the ruling by Judge Whitley down in North Carolina, did not have the authority simply to reconstitute the committee like that. We then followed that a

few days later by filing our reinstatement motion. A few days after that Arnold & Itkin filed its motion, and we had a hearing.

And on January the 19th Your Honor granted those motions, determining that I believe that in fact that was improper, that the reconstitution of these committees was not properly done, and that if there was going to be a change basically the U.S. Trustee or other parties in interest needed to take the appropriate steps under Section 1102 to do that.

As things then developed, you know, we had that occur on January 19th, and then we had an indication from the U.S. Trustee formally on March the 1st that it was not going to pursue any relief with respect to the order. And then it was finally, on March the 7th, so now we're about three months later, moving to continue its existence just for purposes of the appeals, and with respect to a second FTCR. So, it was a very narrow request.

That was filed just before TCC2 was scheduled to dissolve, and it was filed just the day before a hearing that was scheduled on March the 8th. And Your Honor, considering the circumstances, on the 8th, decided that you would temporarily extend their existence, you know, to hear them on this appeal motion and the letter, what we call the letter motion on the FTCR. So, again, that all came at the very last minute, and it was a very narrow request for relief at that

time.

So, having said that, Your Honor, I think the issue, the fundamental issue here had been litigated and determined by the Court, which was the question of whether TCC2 and TCC1 were ever validly formed or not. And I think Your Honor ruled on that. We were past that. But you permitted this accommodation to allow the trial to go forward, and allow time for issues to be heard in the Court. And again, if you go back to the order Your Honor had entered a few days after the hearing you said specifically that it was without prejudice to the U.S. Trustees or any other party in interest's right to move for relief with respect to that order and/or the appointment of an additional claimant's committee, or additional committee member.

So, you didn't say we're done. You just said, look, I'm reserving your right, and you still have your right to take appropriate steps under law, including under Section 1102, to ask to be appointed. And, of course, if you do that, if they had done that, they have to file a motion, and they have to make the appropriate showing. That's never been done. They have never attempted to make the showings required, for example, under Section 1102.

So, now we're to the point -- I would sort of characterize this now as death by a thousand cuts. So they were given a little bit of leeway to last for awhile to accommodate them, and then they came in and said, okay, now we

want to continue for purposes of pursuing the appeals. Again, all came in at the last minute. And now the latest is -- I think it came in yesterday or the day before. The days all are running together in my mind. Now, all of a sudden they are trying to bootstrap off the mediation protocol order and their involvement to some extent in this mediation to say now we should be allowed to continue for all purposes.

And, in fact, it was suggested by Ms. Speckhart if I were to stand up here and to point out that this really shouldn't be condoned, that I would be disingenuous based on comments I made with respect to the mediation protocol order. When that order was entered I don't think any party was agreeing or conceding that TCC2 could continue indefinitely for all purposes, that TCC2 could continue to remain involved in the mediation process indefinitely. That order was simply a recognition that at the time that order was put into place that committee was still in existence under orders of this Court.

And I think there's even language in the mediation protocol order that was intended to clarify the fact that if someone was a party, either is a party or had been a party, it wasn't supposed to be used basically in this proceeding or discussed without the consent of the mediators. Now, I don't know whether that consent was asked for. I'm not aware that it was.

But that's I guess a long way of saying there was

certainly no understanding on this side of the room that by saying we were in accord with that protocol that we were basically agreeing that the committee could stay in place indefinitely and for all purposes, including for purposes of the mediation. That was not what we had agreed to. It was simply a recognition of the facts on the ground at the time that that committee was in existence at that time.

We would submit, Your Honor, that there's simply no legal basis for the relief. I mean, there's no basis, first of all, no legal basis just to say we're going to have a committee that was improperly formed become a formal committee for all purposes in the case to represent this constituency without any compliance with law.

The cases they cite -- that are cited in their brief all involve validly formed committees. There is not a situation like this where they have a case they're relying on where the committee was never validly in existence to begin with.

The cases they cite involve situations where there would be no remaining committee, like post-confirmation for some purpose, and with respect to a plan. There would be no remaining committee. Here you have the reconstituted TCC.

And that's the one thing that's constantly overlooked in these various arguments that are made, which is the whole idea of the order here was at its expiration, at the deadlines

Your Honor set the former committee would be reconstituted. That committee has four mesothelioma claimant members on it. That's like 40 times what their representation should be, if you just look at the relative number of claims, mesos, 400 versus 40,000 on the ovarian side. They would be well represented. And that shouldn't be lost.

This isn't a situation where this -- the committee disappears, any formal representation of the group disappears.

And Your Honor even offered long ago the idea of an ex officio subcommittee if there was some point of view on behalf of the mesothelioma claimants that even having 40 percent or so of that committee wasn't enough you offered that, and they had no interest in that for reasons that we have never understood.

And, you know, I'm not going to spend a lot of time on this, but the Chemtura case which is another case that's the subject of all the briefing, I mean, there -- I mean, the Courts acknowledge the problems when you have committees, and the fact you have all these groups that are basically being funded by the estate with no, you know, real reason to be judicious in the use of their fees.

And in our view, you know, I think our briefing indicates this, we think there's been substantial duplication in this case that hasn't been helpful to the Court, and it's made all these proceedings longer than they need to be, much

more expensive than they need to be.

This goes, Your Honor, to the point I made before. This is just looking at the constitution of these various committees. You have four of the seven TCC2 members were on the original TCC. And if we stay on the track that we've been on since January or so, that's where we would be again. We'd be back with the original TCC. And you can also see in the middle, just TCC1, you've got seven out of nine on TCC1 would move -- or move back to the original TCC and be part of that committee, as well.

And then of course we also have the issue with the professionals. We fully expect the professionals for TCC2, at least two of them will likely migrate back to TCC1 because that's where they started from to begin with.

So again, this isn't a situation where their interests won't be represented, where they won't be protected, where they won't have a say. I mean, they will have a very significant say in the actions of the original TCC because of the fact there's four of them out of 11 parties on that committee, or 11 members on that committee.

Again, I won't spend a lot of time on this, but some of the arguments that were advanced as to why this continued existence made sense were that TCC1 and TCC2 have basically made different arguments, they have had different perspectives, they have expressed to the Court different points of view, but

Your Honor sat through the proceedings. You've been here for every hearing obviously. You sat through the five days of hearings on the dismissal motion and the motion for preliminary injunction. I think that's just belied by what Your Honor experienced.

Counsel advised the Court right at the beginning of those hearings that their interests were aligned, that they had determined to sort of allocate their arguments in certain ways because of the time limitations they had, but I don't think that there was any different set of arguments that was advanced by one set of counsel for one committee versus the other.

And again, just the incredible, from our perspective, waste and duplication that occurred as a result of having all these firms representing two different committees advancing the same arguments, being involved in the same discovery, you know, just an example of a single deposition and the number of professionals that were involved because of all these firms being involved, that's what will continue if TCC2 is allowed to continue going forward.

I'm not going to spend much time on this, Your Honor, but again, this is just basically walking through the TCC2 arguments as to how they were acting in an independent way, and it's simply, again, if you look down the right hand column, it's simply not the case.

And, Your Honor, we shouldn't lose sight of the fact

that there's just no authority for this, as we've talked before. And I'm not going to belabor it again. There's just no authority for the idea that you have separate committees for different diseases. And as you've seen from the briefing, in basically every other case that's never been the situation, and you know, to start here to set that precedent to us is a mistake. It's unwarranted. It's not needed. And it's particularly not needed because you have a committee that was already set that represents the interests of both the mesos and the ovarian cancer claimants. And Your Honor knows, by the way, better than I do, that creditors' committees, this is what they deal with all the time. They have different constituents on the committee. They have different points of view. And that's one of the great benefits of having a committee. They get to work together, hear each other's points of view, work collectively to maximize the position of all creditors, and that's what we would expect would happen here.

There was an argument made in connection when the relief was more narrow that, well, if you don't allow us to continue with the appeal other mesothelioma claimants will file notices of appeal, and that's going to make this even messier and more inefficient, well, that hasn't happened, and the time has passed anyway. You only have one group who has filed a notice of appeal. There's no further ability to do that anyway.

And it is telling that prior to the Court -- or prior to the U.S. Trustee setting up this TCC2, it wasn't like mesothelioma claimants were coming in and filing their own motions the way Arnold & Itkin did and some of the ovarian cancer claimants did. So, it wasn't like mesothelioma claimants were apparently of the view that their interests were not being adequately represented by the original TCC. You would have thought if that were the case they would have been doing what Arnold & Itkin did, and what some of the other ovarian cancer plaintiffs did. They apparently were comfortable with where they were with the original TCC2.

So, I mean, just with this movement today to now we want to be -- continue indefinitely, and I guess Mr. Molton followed that by saying we'll just move them out to June, let's take it from there, that to me is kind of the -- I mean, both are very problematic. The first -- what I heard from Ms. Speckhart is just go ahead and make this an official committee for all purposes in the case even though there's no authority for it, we haven't properly sought it. There's no legal basis for it. We, obviously, oppose that.

Mr. Molton's idea, although obviously not as extreme, is just as bad because all that's going to do is we're going to be back here in June, hearing from Ms. Speckhart that well now that we've been involved in the mediation we're going to tell Your Honor that we were very helpful to the process, we're a

key contributor, we have been doing all our separate analyses and all this separate work, our professionals have all been engaged, and it would be a huge mistake to now terminate our existence, and we should go for another four months because the next stage of this case is estimation, or it's some other process. That's what's going to happen. And so it's like no good deed goes unpunished. Now, Your Honor I thought was very clear that what the U.S. Trustee did wasn't warranted, it wasn't appropriate, and nonetheless he made an accommodation. And now they are trying to use that accommodation to bootstrap that ultimately into completely reversing your opinion. And I would say, Your Honor, that's not appropriate, and, you know, we oppose this. We think the time has come for TCC2's existence to end, we should go back to the original TCC.

The other thing I wanted to comment on the concern from Mr. Molton about the appeal, and is there going to be some problem with the appeal about, you know, whose arguments can we advance, or does the -- do the two committees have to exist for that purpose only, and then TCC -- the original TCC comes back into existence? But we worked on a stipulation with the parties to resolve that issue, which I think very clearly says, and we agree to this, that the original TCC can basically adopt whatever arguments it wants to adopt that were advanced by either TCC1 or TCC2, and it seems to me that should fully resolve any concern that any party might have in terms of

whether the appeal is somehow compromised, or whether there's a need to have the committees exist for purposes of the appeal only, and then be in this uncomfortable position of doing that at the same time that the original TCC comes back into existence. So, Your Honor, we oppose the request. We think the time has come to go ahead and basically formalize what Your Honor decided several months ago, and we should go back to the original TCC.

THE COURT: All right. Thank you, counsel. Mr. Sponder?

MR. SPONDER: Thank you, Your Honor, and good afternoon. Jeff Sponder from the Office of the United States Trustee. Your Honor, the United States Trustee was prepared to provide its observations about TCC2 continuing in existence for purposes of pursuing the appeals of the motion to dismiss and the injunction, but as we've all heard it appears that that request has been revised to allow TCC2 to remain in existence for all purposes.

Your Honor, the United States Trustee does not take a position on the new request, but observes that there are really only two options here, either to allow TCC2 to remain in existence for all purposes, or dissolve the two committees and reconstitute the original committee. Any partial existence should not be allowed. Thank you, Your Honor.

THE COURT: Thank you, Mr. Sponder. Ms. Speckhart?

MS. SPECKHART: Thank you, Your Honor. I would just like to briefly respond to some of the remarks we've just heard. First, on the issue of timeliness, this is not a last minute request, and as a point of fact we're actually quite advanced in the timing of making this request for relief because we're making it prior to the April 12th date, which is the date of the next omnibus hearing, and the date upon which TCC2 and TCC1 are scheduled to be reinstated back to TCC0.

And the reason that we've raised it today and not in two weeks from now is actually twofold. First, the motion for a continuation of TCC2 for purposes of the appeal was on for today, and again, we are in an open process of mediation, and we would prefer to focus our energies on the mediation for the next two weeks rather than having to continue to deal with the potentiality that we're back to another committee for the rest of the mediation, which may or may not have happened on the 12th. So, we thought it would be appropriate, in the interest of being direct and transparent, to bring it to Your Honor's attention before we get too much further down the road with the mediation itself.

I also want to address Mr. Gordon's point about an 1102 motion. It does not need to be a mystery as to why we have not filed a motion under 1102(a)(2). As I said previously in connection with a similar issue at a prior hearing, we were surprised. We had expected the U.S. Trustee, based on its

previous remarks, to file a motion under 1102(a)(1).

Now, we, as a party in interest, have a different standard under the statute. We need to proceed under 1102(a)(2), rather than (a)(1), which is the trustee standard. And as we read the statute and the interpretive case law, what that requires us to demonstrate is an actual conflict. That conflict does not exist right now because we have two committees, so we have a bit of a chicken and the egg problem under the statute. We would have to show something that is presently absent because right now we have the solution that we would need to that problem.

So, what Mr. Gordon is suggesting is that we go back to TCC0, where a conflict may very well arise, and then we come back to Your Honor with a request under 1102(a)(2) for exactly what we have right now, which is the lack of a conflict, and a dual track mediated negotiation pattern that is designed to get us to what I believe Mr. Gordon wants, which is a consensual plan that is produced by a well-functioning, well-structured mediation.

Now, on the question of duplication and fees, Mr. Gordon now, as of this morning, has his solution in the form of a fee examiner. We did not challenge that appointment, and in fact we welcome it. We'll have a discussion at some point in time about (indiscernible) service, I assume. Well, we certainly don't have as many professionals as J&J and the

debtor has, and we're committed to using our resources judiciously. Mr. Gordon said that again that this is something that creditors' committees deal with all the time, and I would respectfully object to that statement. Nothing in this case with respect to the one committee, two committee issue was something that we deal with all the time.

But regardless of what happened in this case, or how it happened, we are where we are. We would like to continue with the mediation. We're knee deep into the mediation right now. And we're committed to exploring what settlements are possible.

We would ask Your Honor to continue the status quo for the benefit of TCC1 and TCC2, and all of the creditors that those bodies represent, and to a date that Your Honor deems appropriate under the circumstances, whether that's July 14th -- or June 14th or some other date. Thank you, Your Honor.

THE COURT: Thank you. Thank you, counsel. I appreciate TCC2's candor and transparency and professionalism. You raised an issue, as -- you've made a comment that we haven't seen these issues, and that's exactly what has disturbed the Court is that we have had ample cases of asbestos -- asbestos cases. We have a related case, Imerys, in Delaware, where we don't see two committees based on disease, and we'll touch on this, I'm sure, coming up. We don't see two FTCRs or FCRs. It's always baffled this Court why the District

of New Jersey suddenly becomes a petri dish for experimentation. It's rhetorical, you don't need to answer. But there's no history that anybody can point to as to structural problems with having a single committee. There are preferences. I can understand, and I appreciate the preferences of having separate committees, but I have not seen any evidence of conflict or structural problems in having a single committee. I am determined to have a single committee in this case, as my earlier decision reflects.

I've given to April 12th, so that steps could be taken to reconstitute the initial committee, it's because I believe TCC2 has a role in the initial committee, you have 40 percent, four members. I've blessed the concepts of ex officio subcommittees, I've blessed the concept of an ad hoc committee. I don't, frankly, expect counsel to disappear and claimants not to have a voice in this case going forward, but no case has been presented to me why there is a need for two committees and that's all I initially sought, was an explanation or a justification, but at this juncture what I've seen is cooperation.

What I saw through the trial was an effort where all issues got raised, nobody was handcuffed and I have no expectation that on an appeal or the balance of this case that issues that need to be presented to the Court are not going to be presented. There's been a stipulation that ensures that and

there are structural mechanisms to allow the meso claimants to have a voice and I would urge them to take advantage of that. So, I'm denying the motion to allow the continuation of the TCC2. Frankly, I don't think we need to go through April 12th but in case there has to be certain steps taken in conjunction with the U.S. Trustee's Office as far as reconstituting the committee and ensuring that there is a voice for the meso claimants, I'll allow it to continue through April 12th. But in my view, especially with the fact -- and let me just reiterate, we have, besides the appeal filed by TCC2, there's three other appeals of the same two orders raising somewhat the same issues and even if there are other strategies or issues that are not incorporated in those appeals, they haven't even been accepted by the circuit and solely are in that briefing stages or argument stage, there's ample opportunity.

So, at this point the motion is denied. Let's talk about the second FCR and I'm going to switch it and tell you, I'm not convinced that there's a need for a second FCR, so those who want to advocate for that, I certainly want to listen.

MR. MOLTON: Judge, can I raise one issue?

THE COURT: Yes.

MR. MOLTON: With respect to Your Honor's just now direction and ruling. I haven't seen the stipulation that we worked out between the two committees and the debtor has been

entered, Number 1. And so, maybe I'm wrong on that.

THE COURT: I thought it had been entered. If not -- I thought it was presented to me.

MR. MOLTON: It was presented but I don't -- I'm not so sure that it's been entered. At least that's what I've been told.

THE COURT: We'll have my staff take a look.

MR. MOLTON: Yes. That's number one. Number two, Judge, my appellate team and litigation team advises me that the steps to go to the circuit have got to be done this week. Yeah. Will be done and, accordingly, we need some clarity as to the actual date when the reunification or reconstitution is going to occur. Once that stipulation is entered, that gives us the formula and the practical fix on what goes forward but we need to know who is going to be filing, you know, who is going to be on the submissions to the circuit and that's going to depend on when exactly. If it's April 12th, I think we can work with that, am I right?

UNIDENTIFIED SPEAKER: (indiscernible)

MR. MOLTON: Yeah, but arguably if it's April 12th, Judge, then we would have the various -- the two committees file those papers and then the stipulation would take effect and we'd deal with that with the circuit.

THE COURT: Well, I haven't shortened it.

MR. MOLTON: Okay.

THE COURT: I've indicated that I don't see the reason but now you've explained one of the reasons why it makes sense to wait through April 12th.

MR. MOLTON: Yes. So, we just needed some clarity on that so that we know what we're doing in order not to confuse the circuit as well.

THE COURT: That's fine. We don't want to confuse them.

MR. MOLTON: Thank you.

THE COURT: All right. So, Ms. Speckhart, I know I've put a burden on you right now to explain why I'm wrong in not seeing the need for a second FCR.

MS. SPECKHART: Well, Your Honor, this matter comes in connection to the letter brief that we filed on March 7th requesting the appointment of a separate FCR.

That request was based on an understanding that in the Third Circuit adequate representation of future claimants is fundamental to any resolution under 524(g), and its repeated mandates that future claimants must be adequately represented throughout the process. And in this Circuit, in the context of 524(g), adequate representation of future claimants and interests requires the undivided loyalty of a fiduciary. And what we have in this case, notwithstanding whether there are one committee or two committees, we have two separate classes of claims and interests. We have mesothelioma on one hand and

ovarian cancer on the other, which are categories of claims with different attributes. And it's not just the markers of the disease that are different, it's the legal and settlement attributes of the claims that are distinct and highly relevant in a setting where an FCR is being asked to negotiate separate resolutions.

And there are meaningful distinctions which I point out on behalf of mesothelioma claims, without intending any disrespect to anyone, it is just impossible to ignore that the profile of legalities and practicalities expose a divergence of character between these two sets of claims, that the future claims representative should not have to struggle to resolve or synthesize in any unitary construct.

And by way of distinction, but not disrespect, I would reiterate that J&J had a very different experience with mesothelioma claims, both in litigation and in settlement. And that, Your Honor, is not an accident. It is because of the legal and practical realities powering resolution of mesothelioma claims that is entirely unique.

There is no dispute of this causation, there is no dispute that asbestos causes mesothelioma which among other things changes the complexion of these lawsuits and their settlement values and their damages that are awarded in litigation in the personal injury actions. And all of these distinct attributes must be taken into account by someone who

is negotiating for future mesothelioma claims and we view it as a very unintrusive request for this Court to appoint someone who is free as a fiduciary to advocate fully and fairly on behalf of a distinct body of claims without suffering the encumbrance of serving a divided master or effectuating dual purposes in trying to get to a plan.

And, indeed, our view is that having two FTCR's to negotiate for two distinct groups of claims as a fiduciary is entirely consistent with those visions of the mediation process that was established through the protocol. And this is why it is a little surprising that this modest request was met with such an over response with dozens of pages of briefing by parties saying that this might get so complicated and we've never seen this before and similar arguments, but this is a case specific consideration and no one can seriously argue that this case is not entirely unique on its own merits.

And so, in this case, if we're going to do this right and we're going to respect the Third Circuit's fiduciary mandates, then we should have two FTCR's who are free to independently negotiate and to advocate the interests of two separate groups. We have some thoughts on who would be an appropriate candidate, taking out of consideration anyone who was the subject of a previous strike and we're happy to share those thoughts with the Court at the appropriate time, but we do reiterate our request that two FTCR's be appointed for the

purpose of negotiation on behalf of the meso's.

THE COURT: All right, thank you. Ms. Cyganowski, were you going to speak?

MS. CYGANOWSKI: I would but I didn't know if the debtor would like to go first, respect to Mr. Gordon.

MR. GORDON: I'm happy to. Your Honor, I won't say much because, obviously, I heard what your, at least, preliminary view is on this. I think for the same reasons you determined that there was no reason to continue TCC2, this request should be denied, as well. There's really no authority supporting this at all. I think in the briefs it was probably made very clear that there's been many, many mass tort cases involving different diseases, in fact, even different products and the like in some cases, where there was a single FCR and there's never been an indication as far as I know that that was a problem. And so, this would be sort of unprecedented for Your Honor to do this.

And the second thing I would say, in some respects it's even worse, you know, by virtue of the fact that this request came after we went through this protocol that Your Honor put together, the purpose of which was to have the parties work together in some ways to come up with a single FCR and to have had the parties all go through that process, to have the two committees work together to propose Ms. Ellis as a consensus candidate to be the FCR for mesos and ovarian. And

then, of course, the debtor agreed to Ms. Ellis and then to come back after that and to say, well, now, we're going to rethink all of that. And, apparently, Ms. Ellis isn't up to the task, or she has a conflict, or some other disabling factor that prevents her from being an effective FCR for both diseases.

That, to me, just seems unfair, it seems too late. I think it's a slight, frankly, of Ms. Ellis to suggest that having gone through this and having identified her as a candidate who could perform this role on behalf of both mesos and ovarian cancer claimants, to come back now and say no, that's -- she can't do it for some reason, that's not appropriate.

So, we continue to object, we think that a single FCR is the way to go. Ms. Ellis was a consensus candidate, you heard at the last hearing, I think, from Mr. Molton, that she's the first female FCR, you know, that's a great thing but to come back now and say, well, that's all true but her role should be diminished and we need to bring someone else in because she can't perform that role, seems unfair to her, unnecessary and would just create duplication. Thank you.

THE COURT: Thank you, Mr. Gordon. Ms. Jones.

MS. JONES: Thank you, Your Honor. Your Honor, on behalf of Arnold Itkin, Your Honor, we submitted a letter on March 23, Docket 1829, and I'd incorporate that herein and I'll

just make a few comments.

Your Honor, as we discussed in our letter, the appointment of a second FTCR is not supported by law or prior practice. We set forth in our letter and walked the Court through the somewhat painful statutory construction and analysis that 524(g) provides for one FCR per trust. In Section F, 524(g)'s use of the singular with respect to quote, legal representative, stands starkly in contrast to elsewhere in 523(g) where the statute identifies the singular and the plural, where it needs to be singular or plural.

Secondly, in the dozens of prior 524(g) cases, all of them have had one FCR, regardless of disease type. In the two cases that the TCC2 identified, where two FCR's were appointed, in both cases there was one FCR for persons who might subsequently assert claims based on asbestos personal injury claims. The second FCR was for future claims that were either not personal injury claims or were not asbestos related. In each case, very importantly, there were two separate trusts. A single trust for all asbestos personal injury claims and demands and a second trust not related to asbestos personal injury claims. One FCR was appointed with respect to each trust.

TCC2 has not identified any case where two FCR's were appointed to represent personal injury claimants with varying diseases arising from the same products. Appointment of a

second FTCR to represent the meso claimants, again, Your Honor is going to hear me say that those who represent less than one percent of the Talc personal injury claims against the debtor will add an unnecessary layer of divisiveness and complexity to this case and, frankly, will elevate the meso claimants to a position of disproportionate influence.

Your Honor, present claimants can be well represented in a creditors' committee which has divergent interests in membership so conflicts -- so can future claimants who have different diseases arising from the same products be represented by one FTCR with the fiduciary mandates to protect their interests.

Your Honor, let's not insult the capabilities and the experience that TCC2, along with the debtors and TCC1 see in the FTCR they all nominated, consented to and Your Honor approved. As FTCR's fiduciary duty is to represent all future claimants, the code provides for one FCR and a wealth of cases prior to this one have shown that one FCR can do the job and they have done the job. We'd ask Your Honor that the request for a second FTCR here be denied.

THE COURT: Thank you, Ms. Jones.

MS. JONES: Thank you.

THE COURT: Mr. Falk.

MR. FALK: Oh, I'm sorry, you were next.

MS. CYGANOWSKI: You want to -- no, no, no.

MR. FALK: No, no, no. Mine is very brief and I just want to introduce -- go ahead.

MS. CYGANOWSKI: Sure? I was going to introduce you, too, so let me go first. Melanie Cyganowski, Otterbourg, co-counsel to TCC1.

Ordinarily, Your Honor, when a judge prefaces remarks saying that you're going to rule in my favor, I would not say anything, but there were a number of issues that were made apparent in the papers and candid argument that I think I would like to address briefly.

First and foremost, however, I'd like to bring the Court back and bring us back, I think it's paramount that the focus remain on the victims who have suffered from the harm that we believe and avers was caused by use of Johnson & Johnson's talc products. A victim diagnosed with mesothelioma or Stage 4 ovarian cancer, is facing odds of fairly certain imminent death. To suggest as TCC2 does, that a single FTCR is unable or incapable of representing future victims facing this type of diagnosis unfairly takes away the emphasis we believe from the wrongs inflicted by Johnson & Johnson and distracts from the importance of focusing on the provision of just and fair compensation for all victims in this case.

But as we've also pointed out, and as Mr. Gordon and Ms. Jones pointed out, there was a process and TCC2 actively participated in the mediation protocol. They affirmatively

agreed with the selection of Randi Ellis as the consensus FTCR candidate and, indeed, they nominated Ms. Ellis as the prospective FTRC candidate for mesothelioma if the Court were to appoint one. As I just indicated to former Judge Falk, Randi Ellis is here in the courtroom, I don't know, Randi, if you'd like to stand. And next to her is very competent and legal counsel, former Judge Mark Falk. Both of them have been actively participating in the case since their -- Ms. Ellis' appointment.

But as I also reviewed the papers and arguments that TCC2 made, not once did they say that she could not adequately and properly serve as the single FTCR. To be sure, they advocate for two but their failure to say that she's unable to perform her duties in a fair and appropriate manner as a single FTCR confirms that appointment of one is appropriate here as it is in other cases.

We also fear that to appoint a second FTRC to adequately -- or excuse me -- to represent claimants with different illnesses is not only duplicative but may engender adverse consequences both in mediation and in the confirmation process. The FTCR, as you know, is charged with making calculations of future claimants, based on reasonable and thoughtful analysis of various numerical paradigms. An approach taken by any FTCR may vary based on individual biases and may be conservative or aggressive in their approach. The

notion of introducing two different viewpoints or approaches into the mediation process is distracting, at best and at worst, is inefficient and potentially disruptive of reaching settlement which at the moment is the goal of all.

Indeed, we fear that instead of negotiating across the table from the debtor and Johnson & Johnson, two FTRC's may find themselves negotiating across the table from each other and simply stated, this would not be helpful.

Fourth, and last, we believe that TCC2 may be going down a path and this is, frankly, why I decided to stand and make remarks known today to the Court, that they're going down a path to set the stage for arguing that there should be two classes of claims which will be required in any LTL Chapter 11 plan. We totally appreciate that today is not the day to deal with classification issues but for the record, we want it to be on the record we disagree. Two diseases caused by use of talc products does not equate to the need for a separate class of mesothelioma and a separate class of ovarian cancer claimants. And this is especially so when one class numbers approximately 450 and the other in excess of 38,000.

We believe that both stand together in a single class as unsecured creditors. This happens all the time, even in asbestos and mesothelioma cases. There's one cancer, there's asbestosis, there's mesothelioma, there are sadly many diseases that happen from asbestos.

We are also at a loss as to why TCC2 argues that TCC1 is somehow trying to bootstrap claims for damages for ovarian cancer claimants by using so called higher value future mesothelioma claims and any statistical analysis of damages. The unfortunate bottom line is that any death caused by the wrongful actions of Johnson & Johnson should be calculated similarly.

Fortunately, many victims of ovarian cancer survive and have lower mortality rates. At no time has TCC1 argued that victims of Stage 1 should be treated similarly to victims of Stage 4. But at the end of the day, none of this is relevant to the question as to whether there should be one or two FTCR's. However parsed, a single FTCR in this case, Ms. Ellis, is appropriate here as it was in Imerys, Duro Dyne and other cases. Thank you.

THE COURT: Thank you, Ms. Cyganowski. Mr. Falk. Judge Falk. I never quite know when it's appropriate to use that title.

MR. FALK: No, no, no, thank you for hearing from me, I'll be very brief. I'm Mark Falk, I'm counsel to Walsh, Pizzi, O'Reilly and Falanga, prospective counsel for Randi Ellis, who's just been introduced to the Court, which I was going to do.

And a very brief comment and that is, we're very new to the case as is Ms. Ellis and we completely defer to the

discretion of the Court in making a decision on this issue. But what I wanted to say and say firmly, is given the background, given the impeccable reputation, given the experience of Ms. Ellis, I am confident, objectively confident, that she can handle any of the tasks that the Court deems to address to her. And I thank you for hearing me.

THE COURT: Thank you, counsel. Ms. Speckhart.

MS. SPECKHART: Your Honor, just one note. I do think that we made it very clear in our papers that this is not about Ms. Ellis' capabilities. We did agree with Ms. Ellis as the consensus candidate, I've had the opportunity to meet Ms. Ellis and I have all the confidence in the world that her intellect, her experience and her abilities.

Ms. Cyganowski is right, that we never took issue with Ms. Ellis' aptitude. We have no issue with Ms. Ellis' aptitude, this is not a question of what can be done, Your Honor, it's a question of what should be done in the interest of efficiency and fairness, to give effect to the mandate provided by the Third Circuit which is a requirement for the undivided loyalty on behalf of the FTCR. And as I said, Your Honor, that loyalty should not have to be divided as between two masters, two classes, particularly in an environment in which, perhaps because of numerosity only, but not on account of relative value or underlying merit, the voices of mesothelioma claimants may be drown out to those -- to a chorus

of ovarian cancer claims which are entirely distinct. Thank you, Your Honor.

THE COURT: Thank you, counsel. Thank you all. Very good arguments. I went into this past weekend, in all candor, probably inclined to seek or to authorize the appointment of a second FCR.

For the most part, if you recall my decision on the motion to dismiss, much of it was premised on the need to protect future claimants which is what I found lacking in the MDL's and the class actions. And it's still my concern that future claimants have the utmost protections and a significant voice. But in reading through the briefs and the materials and, see, briefs do count, it became clear to me that I was looking for a solution for a problem that really didn't exist. That nothing I saw in the record, in the certifications or in the pleadings and the briefs, demonstrated to me anything but confidence in Ms. Ellis' ability, including TCC2's confidence in her abilities, but also that there, indeed, was a conflict.

A future claims representative, one of the primary responsibilities is to ensure that the treatment of future claimants and demands of future claimants are treated consistently with those of the present claimants. So, how mesothelioma claims were treated in litigation in the State Courts really has no bearing or defenses because it's a different task to ensure that the future claimants can be

represented properly. I do not -- and that can be accomplished through structural mechanisms included in TDP's, through trust agreements and through plans of reorganization. And the mesothelioma claimants will have advocates, will have their voices heard throughout this case, they're a substantial part of the committee and they can ensure that that holds true, not only for the present but for the future claimants.

And if at some point in time it appears that there is, indeed, a conflict, we can address that and it's never too late to appoint an independent fiduciary. But, again, I don't see the issue at this moment --

(Phone beeping)

THE COURT: -- nor have there been -- they got tired of me, court solutions -- they heard enough, don't worry, let's continue. I'm hungry. At a future point in time if an independent fiduciary is required, the avenues are there to accomplish that. But not at this juncture. So, I'm denying the request for a second FTCR and why we chose to use FTCR is beyond me, just to make it that much more complicated. But where does that leave us -- and I will enter orders on the motions.

The only thing I thought we had remaining was the FTI application, which I'm not sure where that stands in light of my ruling.

UNIDENTIFIED ATTORNEY: Your Honor hit the nail on

the head.

THE COURT: Do you want me to carry it?

UNIDENTIFIED ATTORNEY: Yes. We will carry it to April 12th.

THE COURT: Why don't we carry it to April 12th? April 12th or April 14th? April 12th, all right.

UNIDENTIFIED SPEAKER: April 12th.

THE COURT: All right. I think we're done. Take care folks, have a good weekend. Thank you.

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**C E R T I F I C A T I O N**

WE, MARY POLITO, ALYCE H. STINE, TAMMY DeRISI and ELAINE HOWELL, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and to the best of our ability.

/s/ Mary Polito

MARY POLITO

/s/ Alyce H. Stine

ALYCE H. STINE

/s/ Tammy DeRisi

TAMMY DeRISI

/s/ Elaine Howell

ELAINE HOWELL

J&J COURT TRANSCRIBERS, INC. DATE: March 31, 2022